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*** Notices to Subscribers and Contributors will be found on page xi.

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Current Topics.

Recovery of Money paid by Mistake.

THE PRINCIPLE is now well recognised that "money paid to discharge the debt of another cannot be recovered unless it was paid at his request, or under compulsion, or in respect of a liability imposed upon that other;" see per WILLES, J., in *Johnson* v. *Royal Mail Steam Packet Co.*, 1867, L.R., 3 C.P. 38, at p. 45. Whilst the principle is sound and clear, its application is in practice a matter of some difficulty. In *Aktieselskabet Dampskibs Steinstad* v. *W. Pearson & Co.*, *Times*, 20th May, Mr. Justice MACKINNON was called upon to apply the rule in rather curious circumstances. The plaintiffs, as owners, chartered to the defendants, a steamer, one of the provisions of the charter-party being that the cargo should be "taken from alongside at the charterers' risk and expense as customary." The plaintiffs, being apparently under the impression that that was the custom in the particular port, made certain payments to stevedores for unloading. Some years later, it was decided (see *The Reusfiell*, 40 T.L.R., at p. 459) that the custom of the port was that part of the cost of unloading in the particular circumstances should have been borne by the charterers and the other part by the shipowners. The plaintiffs sued to recover from the defendants the amount which the defendants ought to have paid as their share of the cost. In his judgment, MACKINNON, J., contrasted two lines of cases, namely, those such as *Bleaden* v. *Charles*, 7 Bing. 246, and *Pownal* v. *Ferrand*, 6 B. & C. 439, showing that money paid under compulsion for another, who is legally liable to pay, can be recovered, and the cases of *Leigh* v. *Dickenson*, 15 Q.B.D. 60, and *North* v. *Walthamstow Urban Council*, 67 L.T., Q.B.D. 672, which establish that a person who voluntarily pays the debt of another does not acquire a right of action to recover the money so paid. The plaintiffs in the case before MACKINNON, J., had made a voluntary payment, and they were not entitled to recover, notwithstanding that had they known the circumstances they would not have made the payment at all.

The Speed of an Omnibus.

THE CASE before Mr. CHARTRES BIRON, referred to *ante*, p. 414, raises some problems on the working of the London Traffic Act, 1924. Previously to that Act there was no power in any authority to restrict the number of omnibuses running within the Metropolis, provided, of course, that each vehicle conformed with the statutory requirements for stage coaches plying for hire, and, if self-propelled, to the police rules as to the construction, etc., of motor omnibuses. The Act gave certain powers to the Minister of Traffic and licensing authorities both to confine the routes of omnibuses to particular approved courses and to restrict the number of vehicles on each. Pursuant to its main provisions, the owner who desires to establish a service along an approved route must now deposit with the licensing authority a schedule containing particulars as to times and fares, etc., to which he must conform. In the case before Mr. BIRON, the proprietor, driver and conductor of an omnibus which was not owned by the General Company were summoned for failing to keep to the scheduled time. The "failure," however, was one of excess, the driver arriving in the Strand no less than forty minutes ahead of the schedule. He pleaded that it was impossible to keep to it, partly because of the gyratory system minimising stoppages and partly by reason of the pressure put on him by passengers in a hurry. The magistrate, however, appeared to suspect a design to outstrip the General Company's vehicles and so entice their passengers, and fined all the defendants.

It was stated that the Commissioner of Police had refused his consent to a reduction of the scheduled time. It is not quite easy to find in the Act his special power to control the time-keeping, but possibly it may be read into the general requirement of s. 6 (2) (*c*) to maintain a regular service. Sub-section (4) requires details of the service to be given in the schedule, which presumably would include intermediate times, and sub-s. (9) imposes a penalty for failure to maintain a service according to schedule. Obviously, if an omnibus or train is advertised to leave a particular place at 10 o'clock and in fact does so at 9.30, the would-be passenger has a greater grievance than if it was half an hour late. Railway companies, of course, carefully exclude liability for late arrival, but usually guarantee that a train shall not start before its scheduled time (a guarantee which some railways carry out in full measure and running over). The excessive speed of omnibuses may certainly be a public nuisance, especially if they race abreast, and when they are going so fast the drivers are apt to neglect their duties as common carriers of passengers, and turn a Nelsonic eye to the signal of the would-be fare on the pavement.

Minor Offenders and the Dock.

THE VERY large number of small offences committed by motorists has raised the question of the proper method of dealing with persons summoned before justices for minor offences when they fail to appear. It is now a common

practice, when such a person writes a letter explaining his inability to attend, to deal with the case in his absence, a course which, beyond involving, in the aggregate, a good deal more book-keeping for the clerk, seems to be a convenient and proper one. In the case of motoring offences it would, indeed, be a little unreasonable to require a defendant, often resident a long way from the scene of his "crime," either to appear in person or to go to the expense of instructing a solicitor, who can do nothing but plead guilty for his client. When no communication is received from the defendant it is the practice in many courts to adjourn the hearing and notify him by post of the adjournment. Even then some defendants discourteously ignore the summons, and the question of the next step is not altogether easy. Many cases are, in such circumstances, heard in the absence of the defendant, but sometimes when the penalty comes to be enforced, there are complaints that no summons and no notification of adjournment has in fact reached the defendant. This, in some cases, is possibly true. The alternative is to issue a warrant, endorsed for bail, thus compelling the personal attendance of the defendant. Oddly enough, some magistrates bitterly condemn this course, and apologise to the defendant, when he appears, for the disgrace he suffers of being placed in the dock. There is, of course, no absolute necessity for a defendant of any kind to be placed in the dock, and a bench anxious to spare his feelings can permit his appearance before them without his being confined in that narrow box. Indeed, persons summoned are usually spared the dock, a course which is quite illogical, but very harmless. A sensible practice would be to use the dock only where it seems likely that the accused person may need restraint, although, as the suffragettes showed, it is sometimes easier to put people in the dock than to get them out. As in many other affairs, a happy medium can usually be found, but it is positively farcical when an inveterate offender is passed upon in his absence again and again, and has at one time several commitments outstanding against him, his *modus operandi* being to ignore justice till the last possible moment. No one certainly ought to sympathise with him when a bench at last loses patience and issues a warrant for his apprehension, even in the first instance. The law is not perhaps required to be as majestic with regard to the offence of failing to have a light on a bicycle, as in the case of a fraudulent bankruptcy, but dignity must be maintained to a reasonable degree.

A Bank Customer and his Pass Book.

A RECENT American case—*Dow* v. *Stockport Savings Bank*, 210 N.W. 815—raised afresh the effect of entries in a customer's pass book. The facts of case the were these: On 1st March the bank debited the customer's account with the amount of a sight draft drawn on him. As it happened, the bank had no authority to pay the draft. The customer's pass book had been balanced on 4th March, 9th April and 21st September, on which latter date the customer called for it, and upon examining its contents he at once reported the wrong debit to the bank. In an action by the customer it was held that he was not estopped from recovering by his failure to call for his pass book and cheques within a reasonable time. It is quite clear that by English law the bank pass book does not constitute a settled account between the parties. In *Kepitigalla Rubber Estates* v. *National Bank of India*, 1909, 2 K.B. 1010, BRAY, J., dealt with this question at some length, and, after reviewing the authorities, came to the conclusion that the mere fact that the customer takes his pass book out of the bank and returns it without objecting to any of the entries does not amount to a settlement of account as between him and the bank. Sir JOHN PAGET, in his treatise on the "Law of Banking," does not consider that the legal position on this subject is at all satisfactory, and he hopes for the day when there will be a fuller recognition of a customer's duty to his bank, including that of giving reasonable attention to his pass book and promptly notifying any disputed items contained therein. The prudent customer will doubtless periodically check the entries in his pass book, but, unfortunately, the bulk of mankind are anything but prudent even in matters which concern so closely their financial position.

Deduction of Pension Payable under Contributory Pensions Act, 1925, from Compensation Payable under Fatal Accident Acts.

WHAT WOULD appear to be a somewhat anomalous ruling of law, but one which nevertheless appears unimpeachable, is that recently determined by the Lord Chief Justice in *Carling* v. *Lebbon*, *The Times*, 14th April, to the effect that in assessing the damages to which the relative of a deceased person may be entitled, under Lord CAMPBELL'S Act, the amount of the pension, to which such relative may be entitled by reason of the death of the deceased under the Widows, Orphans and Old Age Contributory Pensions Act, 1925, must be taken into consideration, and the damages reduced accordingly.

The general principles which apply to claims under Lord CAMPBELL'S Act will be found to be admirably summarised by SCRUTTON, L.J., in *Baker* v. *Dalgleish Steam Shipping Co.*, 1922, 1 K.B., at p. 371, where the learned Lord Justice said: "The claim is a new right given by Lord CAMPBELL'S Act on new principles, not the transfer of any existing right of the dead man. The claimant is entitled to damages proportionate to the injury resulting to her from the death, and that injury must be pecuniary injury. She is entitled to claim, on the one hand, any pecuniary benefit which it is reasonably probable she would have received if the deceased had remained alive: per ERLE, C.J., in *Pym* v. *G.W.R. Co.*, 4 B. & S. 396. It is not necessary that she should have a legal right to have received that benefit from the deceased or should have actually received any such benefit before the death: *Taff Vale Ry. Co.* v. *Jenkins*, 1913, A.C. 1. It is enough that she had a reasonable expectation of pecuniary advantage in the future had the deceased survived. On the other hand, as the question is what is her pecuniary loss by the death, any pecuniary advantage she has received from the death must be set off against her probable loss. This is clear if she receives such advantage as of legal right . . . In my view the same principle applies to voluntary benefits conferred in consequence of death." The Court of Appeal were accordingly of opinion in *Baker* v. *Dalgleish Steam Shipping Co.*, that a receipt by the relatives of the deceased of a pension from the Crown, should as a general rule, be taken into consideration, notwithstanding that the pension was dependent on the voluntary bounty of the Crown.

As regards the deduction of sums payable under policies of insurance, the Fatal Accidents (Damages) Act, 1908, itself appears to recognise the principle that such sums might be deducted in assessing compensation, though there have been cases in which the courts have held in the particular circumstances, and quite apart from any statutory provision similar to that contained in the Act of 1908, that the policy moneys were not to be taken into consideration: see, for example, *Grand Trunk Ry. Co. of Canada* v. *Jennings*, 59 L.T.R. 679; 1888, 13 A. C. 800.

In the provisions of s. 1 of the Fatal Accidents (Damages) Act, 1908, it will be observed that Act is referring to "contracts" of assurance or insurance. Thus, s. 1 provides that, "in assessing damages . . . there shall not be taken into account any sum paid or payable on the death of the deceased under any contract of assurance or insurance. . . ."

The pension which is payable under the Contributory Pensions Act, 1925, can scarcely be considered as a sum payable under a "contract" of insurance. This was the view taken by the Lord Chief Justice in *Carling* v. *Lebbon*, who accordingly held that the amount of the pension had to be deducted in assessing the compensation payable.

The Trade Disputes and Trade Unions Bill.

By E. P. HEWITT, K.C., LL.D.

(*Continued from p.* 398.)

V.

By the end of last week, cl. 1—the most difficult and controversial clause in the Trade Disputes Bill—and cl. 2, which may be regarded as consequential on the former, had passed through committee; and two more clauses will have been passed by the time this article appears in print. These four clauses form together by far the most important part of the Bill.

The first sub-clause of cl. 1 was passed with the Government amendment, mentioned (as then proposed) in The Solicitors' Journal in its issue of the 14th May. The main effect of this amendment is to extend the provisions of sub-cl. (1) to lock-outs. Sub-clause (2) has received substantial amendment with a view to exempting from liability in respect of an illegal strike the ordinary member of a trade union who has no control over and takes no part in instigating such a strike. The clause as it stood before amendment was as follows:—

"(2) If any person declares, instigates [furthers, or takes part in] a strike declared by this Act to be illegal, he shall be liable on summary conviction to a fine not exceeding ten pounds or to imprisonment for a term not exceeding three months, or on conviction on indictment to imprisonment for a term not exceeding two years."

The amendment strikes out the words printed above within brackets, and inserts in their stead the words, "*incites others to take part in, or otherwise acts in furtherance of*"; and after the word "strike," it adds the words "*or lock-out.*" The amendment also adds the following proviso:—

"Provided that no person shall be deemed to have committed an offence under this section or at common law by reason only of his having ceased work or refused to continue to work or to accept employment."

Between this sub-clause and the sub-clause originally numbered (3), and now numbered (4), a new sub-clause is inserted. This new sub-clause is in fact a further modification of sub-cl. (1) and is designed to render less obscure the question whether or not a dispute is to be deemed to be within a particular trade or industry. It is in the following terms:—

"(3) Without prejudice to the generality of the expression 'trade or industry,' workmen shall be deemed to be within the same trade or industry if their wages or conditions of employment are determined in accordance with the conclusions of the same joint industrial council, conciliation board, or other similar body, or in accordance with agreements made with the same employer or group of employers."

Sub-clause (4) (being the original sub-cl. (3)) has been passed as originally drawn excepting that the words "or lock-out" have been added after the word "strike."

Clause 1 as thus passed retains what (it is most respectfully thought) was the initial mistake of making it necessary that a strike should be a sympathetic strike in order that it should be illegal. It thus remains open to the criticism made in The Solicitors' Journal in its issue of the 14th May. Having regard, moreover, to the very wide interpretation now given to the words "within a trade or industry," the original object of the section, namely the protection of the public from a coercive or intimidatory strike, appears to have been in some measure lost sight of.

Clause 2 (1) has been passed as introduced, with the addition of the words "or lock-out" after the word "strike." Sub-clause (2) has not been altered. Sub-clause (3), which makes the clause retrospective, has been amended by adopting (in substance) the course suggested in The Solicitors' Journal in its issue of the 14th May. It was there pointed out that there have been other strikes in recent years, besides the strike of last May, which might be held illegal under cl. 1, and that it would be well to amend sub-cl. (3) by adding the words "provided that such strike took place *since April* 1926." The Government have in fact amended the clause by adding after the words "As respects any strike before the passing of this Act," the words "*but since the first day of May* 1926." The clause as introduced was as follows:—

"(3) As respects any strike before the passing of this Act which is declared by this Act to have been illegal, this section shall have effect as if it had been in operation when the strike took place."

As amended in Committee the clause runs as follows:—

"As respects any strike *or lock-out* before the passing of this Act, *but since the first day of May* 1926, which, according to the law as declared by this Act, was illegal, this section shall have effect as if it had been in operation when the strike *or lock-out* took place."

It might have been safer to use the words "since April 1926" instead of "since the 1st May 1926." The 1st May, 1926, was a Saturday, and the Council of the Trade Union Congress met on that day and passed a resolution ordering a general strike to begin on Monday, the 3rd, if the miners' notices had not been withdrawn. It would seem arguable, therefore, that the strike did in fact begin on, and not "since," the 1st of May.

In the first two days of the present week, cl. 3—which is of great importance, and relates to intimidation in picketing—was passed. On Monday evening the question was debated at length whether the clause introduces new law or is merely declaratory. The Home Secretary appears to have rested his defence of the clause—or at all events of sub-cl. (1)—upon the ground that it is merely declaratory of the existing law, and that in fairness to the ordinary member of a trade union, who may break the law under a misapprehension, it is necessary to state the existing law in a clear and simple form. It may be permissible to criticise this attitude as unduly timid. The public take no interest in the question whether or not the clause is merely declaratory. Such a question is immaterial; the sole question being whether the clause is just, reasonable, and in the public interest. The clause would certainly seem to modify to some extent the existing law. Sub-clause (2), which defines *intimidation* and *injury*, appears to be an enlargement of what the existing law disallows—an enlargement no doubt justifiable. Again, sub-cl. (4) makes it unlawful "for the purpose of inducing any person to work or to abstain from working, to watch or beset a house or place where a person resides or the approach to such a house or place." This is an improvement in the law, for the reasons given in previous issues of The Solicitors' Journal, but it is also an alteration. Under the existing law no distinction is drawn between watching and besetting the place where a man resides, and the place where a man works. Under the Bill, attendance at or near a place of residence *may* amount to an offence, although the attendance is not "in such numbers or otherwise in such manner as to be calculated to intimidate."

Clause 3 was passed on Tuesday evening in the form in which it was drawn, excepting that the last few lines of the definition clause (sub-cl. (2)) were struck out. This sub-clause ran as follows:—

"(2) In this section the expression 'to intimidate' means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family, or of violence or damage to any person or property, and the expression 'injury' includes injury other than physical or material injury [and accordingly the expression 'apprehension of injury' includes an apprehension of boycott, or loss of any kind, or of exposure to hatred, ridicule or contempt]."

The words placed above within brackets have been struck out of the Bill.

Clause 4, the substantial effect of which is to substitute what is called "contracting in" for "contracting out," in relation to the political levy—a proposal which has been already commented on in THE SOLICITORS' JOURNAL—has not passed at the time of writing, but it will no doubt pass, and probably without alteration, before this week's issue of THE SOLICITORS' JOURNAL appears.

(To be continued.)

Private Street Works.

BY ALEXANDER MACMORRAN, M.A., K.C.

(Continued from p. 400.)

The only other provision of the Act of 1892 which calls for observation is that which is contained in s. 22, which provides that no railway or canal company shall be deemed to be an owner or occupier for the purposes of the Act in respect of any land of such company on which any street shall wholly or partially front or abut, and which shall at the time of the laying out of such street be used by such company solely as a part of their line of railway, canal or siding, station, towing path or works, and shall have no direct communication with such street. No such provision as this is contained in the Public Health Act, 1875. It is to be noticed that the section applies only where, at the time of the laying out of the street, the company were using the land for purposes of their railway. A case may be referred to in which the question arose, whether the land was so used, and that was held to be a question of fact: see *Rex* v. *Jones*, 71 J.P. 326.

The section goes on to provide that the expenses incurred by the urban authority which, but for this provision, the company would be liable to pay, shall be repaid to the urban authority by the owners of the premises included in the apportionments and in such proportion as shall be settled by the surveyor. It would appear that the procedure is to ascertain the amount properly apportionable to the railway company apart from the Act, and to divide that up among the other owners of property abutting upon the street in the proportion settled by the surveyor. The section does not say how such apportionment is to be made, but probably the surveyor would act on the safe side and make the apportionment according to frontage.

The section further provides that in the event of the company subsequently making a communication with the street, they shall pay to the urban authority the expenses which they would have been liable to pay but for the provisions of the section, and the urban authority are required then to divide among the owners for the time being included in the apportionment, the amount paid by such company to the urban authority, less the costs and expenses attendant upon such division, in such proportion as shall be settled by the surveyor, whose decision is made final and conclusive. This provision seems to lose sight of the fact that the owners among whom the money is to be divided may be an entirely different set of owners from those who had to pay in the first instance. No provision is made, however, in respect of any change of ownership. It has to be added that the section in question does not apply to any street existing at the date of the adoption of the Act of 1892.

Such, in very brief outline, are the provisions of the Private Street Works Act, 1892. It is obvious that in some respects such provisions are preferable to those of the Act of 1875, but it seems to be equally clear that there are disadvantages arising from the adoption of the Act of 1892. Not the least of these disadvantages consists in the fact that many matters hitherto in the discretion of the local authority have now to be decided by the justices at petty sessions. This is notably the fact in cases where objection is made that the proposed works are insufficient or unreasonable or that the estimated expenses are excessive. Hitherto such a question had been decided by the local authority alone, subject only to appeal to the Minister of Health under s. 268 of the Public Health Act, 1875.

VII.

PAVING EXPENSES IN THE METROPOLIS.

Hitherto attention has been directed to the operation of the Public Health Act, 1875, and the Private Street Works Act, 1892, in so far as these enactments provide for the making up and taking over of what may be called private streets and charging the expenses upon the frontagers to such streets. It has been pointed out that the liability of a frontager depends upon whether the street in question is or is not a highway repairable by the inhabitants at large. If it is not, the frontagers can be made liable. The law in the metropolis is entirely different. The liability depends upon whether the street is or is not a new street, and no reference whatever is made in the Metropolitan Acts to the question whether the street is or is not a highway repairable by the inhabitants at large. The Metropolis Management Act, 1855, contains a definition of the expression "street." Section 250 of the Act of 1855 provides that the word "street" shall apply to and include any highway (except the carriage-way of any turnpike road) and any road, bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and a part of any such highway, road, bridge, lane, footway, square, court, alley or passage. The amending Act of 1862, s. 112, adds to the definition the words: "any mews and a part thereof," and it defines the expression "new street" as applying to and including "all streets hereafter to be formed or laid out, and a part of any such street, and also all streets, the maintenance of the paving or roadway whereof had not, previously to the passing of the Act, been taken into charge and assumed by the Commissioners, trustees, surveyors or other authorities having control of the pavements or highways in the parish or place in which such streets are situate, and a part of any such street, and also all streets partly formed or laid out."

It has long been established that the definition of a new street which has just been quoted does not prevent the interpretation of the expression in its natural and ordinary sense, and it has accordingly been held in a long series of cases that an ancient highway may become a new street for purposes of the Acts by the erection of houses in it to such an extent as to give it for the time being the character of a street in the ordinary and popular sense of the term. A quotation may be made from the judgment of Lord BLACKBURN which makes clear the proposition which the courts have laid down. In *Pound* v. *Plumstead District Board*, 41 L.J., M.C. 51, a question arose with regard to an ancient highway called Burnt Ash Lane. Lord BLACKBURN said that when the Act was passed this was a country lane which no person, in the ordinary sense of the word, would call a street, nor was it ever thought of being made into a street in the ordinary sense of the word. It was a country lane with a highway going down it. Subsequently houses were built on each side and it was converted ultimately into a street, that is to say, into what anyone commonly would call a street—a place where there were houses on each side, making it a street in the ordinary sense of the word. And referring to the definition, he said: "It does not at all follow, where the Legislature from the context show that they are using the word 'street' in its ordinary and natural sense, that because they say the word shall include other things, that we are to say it does not include those which come within its own natural sense."

(To be continued.)

THE MIDDLESEX HOSPITAL.

WHEN CALLED UPON TO ADVISE AS TO LEGACIES, PLEASE DO NOT FORGET THE CLAIMS OF THE MIDDLESEX HOSPITAL, WHICH IS URGENTLY IN NEED OF FUNDS FOR ITS HUMANE WORK.

Some Legal Aspects of Town Planning.

By RANDOLPH A. GLEN, M.A., LL.B.
(*Editor of "Glen's Public Health," 1925 Edition.*)

(*Continued from p. 379.*)

IV.

HAVING in my previous articles dealt with all the town planning cases, reported and unreported, that I have come across, I will continue the series with two typical and recent inquiries into the merits of schemes.

One was into the scheme of the Sidcup Urban District Council.(1) The preliminary statement, as submitted to the Minister of Health, covered the whole of the district, including the built-up part. The area of the district is 2,043 acres or 3·192 square miles, the rateable value £74,821, and the population 9,271. Early development is expected, the district being contiguous on one side to the County of London and attractive to builders, and the future population is expected to be in the neighbourhood of 75,000. The crux of the scheme is the golf course. The council are satisfied that for the moment this land shall be used as golf links, but they propose to secure that at no time in the future, after the lease to the club has expired, shall this land become the prey of the builder. There are at present, excluding the golf course (which occupies 94 acres), nine acres of public recreation grounds in the district, and in the scheme it is proposed to provide ultimately for 177 acres, including the golf course. In addition, the scheme allocates 31 acres for allotments and schedules various private open spaces, including cricket and other sports grounds, as permanent open spaces. As to the golf course, an agreement was reached at the inquiry, subject to the approval of the Ministry of Health, to the effect that the whole land should be scheduled for form's sake as building land of low density, on the understanding that the owner shall let it on lease to the golf club for twenty-one years, with an option to the district council to purchase the land for use as a public open space at the end of that period. The purchase price was to be the valuation as at the date of the inquiry, and in the event of failure to agree as to the price, the figure was to be determined by arbitration in accordance with the Acquisition of Land Act of 1919. The road proposals of the North West Kent Regional Committee have been included. There is to be an important link in the traffic of Outer London, providing a rough semi-circle from the Thames in South West London to the lower Thames in South East London, at an approximate distance of 10 to 12 miles from Charing Cross. An interesting feature of the scheme is the provision of "parkways." These are green walks, free from vehicular traffic. They generally follow existing watercourses, and serve the further purpose of placing the control of these waterways in the hands of the local authority, thus providing a means of disposing of surface water drainage in a natural way. As to density, the district has been mapped out in the light of past developments, and the minimum has been fixed at six houses to the acre and the maximum at twelve. The district is at present entirely residential, but, to provide for possible future needs, an area adjoining the London boundary, and another adjoining the existing industrial area provided for in the town plan of the Bromley Rural District, have been scheduled for factories.

The clerk to the Council, Mr. Frank Bird, has very kindly sent me the "observations" of the Minister on the scheme, and the following quotations therefrom should prove of value (*a*) to councils engaged in the preparation of town planning schemes, (*b*) to those who desire to criticise such schemes as persons whose property is affected, and (*c*) to those who are called in as professional advisers of such councils or persons.

(1) *Re Sidcup Urban District Council Town Planning Scheme, Justice of the Peace Journal*, 25th September, 1926, pp. 538, 539.

The area included in the scheme, as stated above, was the whole district, but the Minister has hatched in black on the map certain built-up portions, and stated that he "proposes to exclude these," giving the following as his reasons: "In view of the terms of the Town Planning Act, 1925, it would appear that the inclusion in a scheme of any built-up lands must be justified on the ground of securing the general object of the scheme, judged from the point of view of the unbuilt on lands alone, and that only such pieces of land already built on can be included as can be shown to be needed for the completion of the scheme for the undeveloped land as such. For this purpose, it would not appear to be legitimate under the terms of the Act to take into account the advantages or disadvantages either to the town planning authority's district as a whole or to the built-up land itself." That is a most important pronouncement on the scope of the Act with regard to areas already "built-up."

As to "*streets*," the Minister's observations were as follows: "The Minister deprecates the inclusion generally in a scheme of more than the principal road communications, and, except at the owner's express wish, it is not considered generally desirable, in the absence of special reasons, to stereotype the position of subsidiary streets by fixing them in the scheme itself. Estate development is, in the Minister's opinion, a matter in which the initiative should usually rest with the owner, subject to reasonable control at the time of development, and can be dealt with sufficiently and more safely without fixing the details at the time of the scheme. It is suggested, therefore, that Streets Nos. . . . should be omitted, and their construction left to be dealt with under general provisions in the scheme governing estate development or under the procedure of the Interim Development Order where private development is undertaken prior to the approval of the scheme. In none of these cases would any essential object appear to be secured by the fixing of the streets in the scheme itself, and the alternatives equally or more convenient to the owner may present themselves as development proceeds." With regard to certain other streets, the Minister said: "The object of these streets appears to be to secure access to proposed open spaces or allotments, and it is suggested that they should be coloured as part of the proposed open spaces or allotments, as the case may be." Other street suggestions were: (*a*) that two should be narrowed from 75 to 60 feet; (*b*) that two should be omitted because "the advantage to be gained from their construction would not justify the expenditure likely to fall upon the rates"; (*c*) that the junction of two streets might be "opened out" on the lines indicated on the plan which was enclosed with the observations; (*d*) that a proposed widening should be shown on the Map; (*e*) that two proposed widenings were not needed; (*f*) that the width of one street should be increased to 40 feet, and of another to 50 feet; (*g*) that an existing street should be continued westwards to connect with another street; (*h*) that a proposed street should be amended so as to form a "continuation" of another street; (*i*) that a proposal to divert a footpath should be omitted; (*j*) that provisions for widening other existing streets should be added; (*k*) that the adjoining council should be consulted with a view to joint action in widening a street in the two districts; and (*l*) "the Minister is advised that the continuation of . . . Road southwards will pass through one of the most exclusively residential parts of Chislehurst, and would be liable to give rise to heavy claims for compensation on account of depreciation of property. He suggests therefore that the Council should consider, in consultation with the neighbouring local authority and the joint committee, whether it would not be practicable to divert the proposed road in a south-westerly direction on the lines indicated by dotted lines on the enclosed plan."

The Minister's observations on other proposals in this scheme, such as "parkways," "building-lines," "zoning," etc., will be dealt with next week.

(*To be continued.*)

Implied Agreement

To allow Employé to Perform Employment.

ALTHOUGH a contract might purport to have fully set out therein all its terms, there may be, in certain cases, further terms of which no express mention has been made, which are to be implied and read into the contract, in order to give full force and effect thereto. An interesting application of this doctrine is to be found in the recent decision delivered by Mr. Justice HORRIDGE in *Marbe* v. *George Edwardes (Daly's Theatre) Limited*, *Times*, 4th May, 1927.

In that case the plaintiff, an American actress, had been engaged by a contract in writing, to play a part in a piece to be produced in London, for the period of rehearsal, and the run of the play. The defendants, however, eventually refused to allow the plaintiff to play the part, and selected someone else for the purpose. But they paid the plaintiff a sum of money representing the whole of the salary that would have been payable to her, for the run of the play. The plaintiff claimed a further sum over and above the sum paid to her in respect of the salary she would have earned, as damages for the loss of reputation that she had suffered by not being allowed to play the part.

The material findings of fact were as follows: (1) The plaintiff was, and was known by both parties to be, an American actress of position; (2) It was important, and it was known to both parties that it was important, for her to have the engagement with the defendants, at the theatre in question under the agreement; (3) It was important and known by both parties to be important for her to play the part in question; (4) It would be disastrous and known to both parties that it would be disastrous to the plaintiff, if after its being publicly known that she was engaged to play the part in question, she was subsequently not allowed to do so.

These were the material circumstances in which the contract for the engagement, which was reduced to writing, had been entered into, but there was a further collateral and verbal agreement between the parties, viz., that in consideration of the plaintiff's entering into the contract, the defendants would advertise her in a prominent position, and after the contract had been entered into the plaintiff was so advertised by the defendants.

On these facts, the question for the court was whether there was an implied term, that the defendants would give the plaintiff an opportunity of acting, and if there was in fact such an implied term, the defendants would be liable to pay damages for a breach thereof.

Now, the general principle of law is clear, that in a contract of hiring a stipulation is not necessarily to be implied that the employer will give the employé an opportunity of doing the work he is engaged to do; and it is also a general principle of law, that although the dismissal of, or the refusal of employment to a servant, must in most cases involve a loss of reputation to the servant, such loss of reputation is not a factor which can be taken into consideration by the court in assessing the damages to which the servant may be entitled for breach of contract. The law on this latter point was thus stated by Lord LOREBURN in *Addis* v. *Gramophone Company Limited*, 1909, A.C., at p. 491; "If there be a [wrongful] dismissal, the employer must pay an indemnity; but that indemnity cannot include compensation either for the injured feelings of the servant, or for the loss he may sustain from the fact that his having been dismissed of itself makes it more difficult for him to obtain fresh employment."

Such an item of damage, i.e., loss of reputation, can, however, it seems, be claimed where it can be shown that there was an express or an implied term in the contract that the employé should be given an opportunity of performing the work for which he has been employed, and, it is submitted, where it is shown further, that it is known to both parties that a refusal to permit the employé to perform the work in question would in the circumstances involve a serious loss of reputation to the employé, and consequently diminish his or her chances of finding employment of a similar character.

The most frequent application of the above principle is to be found in cases where an actor or actress is engaged to play a part.

Where there is an express contract to allow the actor an opportunity of playing the part, for which he has been engaged, no difficulty will arise; but where there is no such express term, it is a matter of no little difficulty to determine whether such a term is to be implied.

An examination of the principles to be found in the decided cases may therefore be of advantage.

We may begin with the general principle that, in a purely business contract of employment no term is to be implied that the employers will give the employé any work to do on his behalf. Thus in *Turner* v. *Sawdon*, 1901, 2 K.B. 653, which may be regarded as a leading case, where the defendants, who were in the cotton trade, agreed to engage and employ the plaintiff as their representative salesman for a period of years at a salary, but subsequently, before the expiration of the period, although willing to pay the plaintiff his salary, refused to give him any work to do on their behalf, the Court of Appeal held that there was no obligation on the defendants to provide the plaintiff with the work, and that too, notwithstanding the fact that the faculties of the plaintiff as a salesman would become blunted by not having any work to do (cf. also *Lagerwall* v. *Wilkinson*, 80 L.T.R. 55).

On the other hand, an examination of such cases as *Bunning* v. *Lyric Theatre*, 71 L.T.R. 396, goes to show that, where a contract is made for the purpose of securing publicity, or where publicity is an element of the bargain, an agreement to allow the employé to perform the work in question is to be implied.

It may be argued of course, that where the employment is such that publicity is necessarily involved, as in the case of the employment of an actor, then by virtue of the nature of the employment itself, such a term must be implied. We only mention this argument merely to reject it as unsound. If any authority is needed, reference should be made to the *dicta* of MCCARDIE, J., in *Turpin* v. *Victoria Palace*, 1918, 2 K.B. 539. Thus the learned judge says (1918, 2 K.B., at p. 549): "The fact that a man is an actor, a public singer, or the like, cannot affect the settled principles of construction which are applicable to every contract. It is an important circumstance to be considered in arriving at the meaning of the bargain, but it is no more than a circumstance. In every case where the question arises whether an employer is bound to provide actual employment the court must apply the same rules of interpretation whether the employé be a traveller or a public singer, a clerk or a music-hall artiste."

And in *Turpin* v. *Victoria Palace*, itself, Mr. Justice MCCARDIE held that the plaintiff, who was a music-hall artiste, was not entitled to damages for loss of publicity by not being allowed to perform, on the ground that the defendants had entered into the contract upon no other basis than the business engagement of an artiste at an agreed salary, no element of publicity to the plaintiff entering into their part of the bargain.

Where, in the contract, employment of an actor, there is an agreement to advertise the actor, then it seems there can be no question that publicity is one of the essential elements of the contract, so that a term is to be implied that the actor will be given an opportunity of playing the part in question.

This appears to be the basis of the decision of STIRLING, J., in *Bunning* v. *The Lyric Theatre Ltd.*, 71 L.T.R. 397.

In that case the plaintiff had been engaged by the defendants as the musical director of their theatre at a salary, with a provision, that the plaintiff's name should be announced in certain daily newspapers. One of the most important duties

of a musical director is to conduct the orchestra, and the plaintiff, after being allowed to conduct the orchestra for three nights, which he did with success, was not permitted subsequently by the defendants to do so. In an action by the plaintiff against the defendants the plaintiff was awarded substantial damages on the ground that their conduct had deprived him of the professional reputation he would have gained had the defendants fulfilled their bargain, an implied term having been read into the contract to the effect that the defendants were to allow the plaintiff an opportunity of performing the work for which he had been engaged.

Mr. Justice HORRIDGE appears to have been largely influenced by this case in determining that such a term was to be implied into the contract in *Marbe* v. *George Edwardes (Daly's Theatre) Ltd*, by reason of the collateral agreement on the part of the defendants to advertise the plaintiff in a prominent position, the defendants being thereby bound to employ the plaintiff so that such advertisement might be true.

From the above cases, therefore, the principles are clearly to be drawn, that while in a contract of employment no term is to be implied that the employé will be afforded an opportunity of doing the work in question, if the publicity is made a part of the contract, as for example, where there is an agreement to advertise, such a term is to be implied, and damages for a breach thereof will be awarded.

When one examines, however, the root of these principles they appear to be nothing more than examples of the basic or general principles with regard to implied terms in contracts: a principle which will be found to be admirably stated in the judgment of BOWEN, L.J., in *The Moorcock*, 14 P. 64; and in the judgment of Lord ESHER, M.R., in *Hamlyn & Co.* v. *Wood & Co.*, 1891, 2 K.B. 488.

Thus BOWEN, L.J., says in *The Moorcock*, 14 P., at p. 68: "An implied warranty, or, as it is called, a covenant in law, as distinguished from an express contract or express warranty, really is in all cases founded on the presumed intention of the parties and upon reason. The implication which the law draws from what must obviously have been the intention of the parties, the law draws with the object of giving efficacy to the transaction and preventing such a failure of consideration as cannot have been within the contemplation of either side; and I believe if one were to take all the cases, and there are many of implied warranties or covenants in law, it will be found that in all of them the law is raising an implication from the presumed intention of the parties, with the object of giving the transaction such efficacy as both parties must have intended that at all events it should have."

Matrimonial Jurisdiction of Justices: Recent Cases.

THE decision in *Price* v. *Price*, 1927, 71 SOL. J., p. 432, by the President of the Divorce Division and BATESON, J., on the 27th April, is interesting, but only to be expected. It was an appeal by a husband against a justices' order made on the ground of neglect to maintain a wife and her infant child. It was contended that the six months' limit imposed by s. 11 of the Summary Jurisdiction Act, 1848, applied, and ran from the date when the appellant had last paid any sum by way of maintenance. But the court held that the effect of the repeal, by the Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 1 (1), of the words "and shall by such cruelty or neglect have caused her to leave and live separately and apart from him," in s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, was to make neglect to maintain a continuing matter.

One caution is necessary to those applying this decision. It is not strictly correct to say that the limit of six months does not apply to continuing offences or grounds of complaint. It does not apply during their continuance, but may apply from the date they are put an end to. Thus, although, in a case of persistent cruelty, there is no longer an act of leaving to determine the date from which the six months will commence to run, yet if the cruelty ceases, either by the wife absenting herself or the husband reforming, it is not to be supposed that years hence she can be in time for an order. We conceive that the limit would run from the last act of cruelty. Similarly a husband may put an end to his neglect to maintain by commencing to support his wife, or she may put an end to it by refusing reasonable maintenance *bonâ fide* tendered by the husband. It is indeed doubtful whether, in such circumstances, her remedy, apart from any question of time limit, does not disappear altogether, as it does in the case of another continuing ground of complaint—desertion, which can be put an end to by a *bonâ fide* offer to return to cohabitation. Certainly, justices who find that a man genuinely intends properly to maintain his wife and children, ought not to make an order on the ground of neglect to maintain, even if there has been such neglect within the six months immediately preceding her complaint.

On the same day the same judges decided *Pratt* v. *Pratt*, 1927, 71 SOL. J., p. 433. This was an appeal against the revival of an order by justices, which had previously been discharged on the ground of adultery, the fresh evidence tendered being the judgment in a divorce suit, dismissing a petition which alleged the same adultery. It was held that it was competent for the justices to revive the order on this "fresh" evidence, consisting of a judgment of a superior court.

It does not appear whether the order revived was merely an order for maintenance, or whether it contained other provisions. Upon justices' powers under s. 30 (3) of the Criminal Justice Administration Act, 1914, we are getting two lines of decisions, one line dealing with bastardy, which declares that only the money part of the order can be dealt with: see *Colchester* v. *Peck*, 1926, 2 K.B. 366; approved in *R.* v. *Copestake*, 1926, 90 J.P. 191; 24 L.G.R. 562; and the other, dealing with husband and wife cases, which regards the justices' powers as quite general, and extending to the revival of a separation provision, see *Dodd* v. *Dodd*, 1919, 83 J.P. 287. The sooner these two lines of decisions are brought together, and reduced to a common rule, the better it will be.

Income Tax on a Cricketer's Benefit Match.

THE view that we took (70 SOL. J. 679) that the decision of ROWLATT, J., in *Reed* v. *Seymour* was correct, and that the opinions of the Master of the Rolls and Lord Justice WARRINGTON in the Court of Appeal in the same case were erroneous has now been confirmed by the House of Lords: *Seymour* v. *Reed*, *Times*, 25th inst.

The point that was raised in this case was whether gate money received from a benefit cricket match was a "perquisite or profit" and as such taxable under Sched. E, or whether, on the other hand, it was merely a personal gift and as such not taxable at all.

The material facts of this case were shortly as follows: The appellant was a well-known professional cricketer, employed by the Kent County Cricket Club, and on the eve of his retirement a benefit match was granted to him by the club.

According to the rules of the club, the committee reserved to themselves an absolute discretion as regards benefit matches, the collection of subscriptions in connexion therewith, and the dealing with the proceeds of such matches as they thought fit in the interests of the beneficiary.

The proceeds had been invested by the club for SEYMOUR'S benefit, and the dividends thereof, less tax, were paid to the club, who handed the same over to SEYMOUR. Subsequently, the investments were realised and the proceeds were paid by the club to SEYMOUR, who, with the approval of the trustees of the club, invested the same in the purchase of a farm.

The Crown claimed that this sum which had been paid over to SEYMOUR, in so far as it represented the proceeds of the benefit match, was a "perquisite or profit" and liable to tax under Sched. E.

Simple as may be the distinction between remuneration and gift, the application of that distinction to a practical case is not seldom fraught with difficulty, as the conflicting opinions of the judges in *Reed* v. *Seymour* serve to show.

The principle to be gathered from the decided cases is that the expression "salaries, fees, wages, perquisites or profits whatsoever" from an office in r. 1 of Sched. E, include all payments made to the holder of an office or employment as such, *i.e.*, by way of remuneration for his services, even though such payments may be *voluntary*, but they do not include a mere gift or present (such as a testimonial) which is made to him *on personal grounds and not by way of payment for his services* (*cf.*, per the Lord Chancellor in *Seymour* v. *Reed*).

The principle is clearly stated also in the judgment of Lord LOREBURN in *Blakiston* v. *Cooper*, 1909, A.C. 104, at p. 107. In that case the House of Lords held that Easter offerings of money given voluntarily to an incumbent of a benefice as such for his personal use, for the purpose of increasing his stipend were assessable. In his judgment in that case Lord LOREBURN said: "In my opinion, where a sum of money is given to an incumbent substantially in respect of his services as an incumbent, it accrues to him by reason of his office. Here the sum of money was given in respect of those services. Had it been a gift of an exceptional kind, such as a testimonial or a contribution for a specific purpose, as to provide for a holiday or a subscription peculiarly due to the personal qualities of the particular clergyman, it might not have been a voluntary payment for services, but a mere present."

The House of Lords in *Seymour* v. *Reed*, applying the above principles, held that the benefit was not remuneration, but a personal gift. After pointing out that the *terms of his employment did not entitle the appellant to a benefit*, the Lord Chancellor continued: "A benefit was not usually given early in a cricketer's career, but rather towards its close, to provide an endowment for him on retirement, and except in a very special case, it was not granted more than once. *Its purpose was not to encourage the cricketer to further exertions, but to express the gratitude of his employers* and of the cricket-loving public for what he had already done *and their appreciation of his personal qualities*. It was usually associated, as in this case, with a public subscription, and just as those subscriptions, which were the spontaneous gift of members of the public, were plainly not income or taxable as such, so the gate moneys taken at the benefit match, which might be regarded as the contribution of the club to the subscription list, were in the same category. *If the benefit had taken place after Seymour's retirement, no one would have sought to tax the proceeds as income. The circumstance that it was given before, but in contemplation of retirement, did not alter its quality.* The whole sum—gate money and subscriptions alike—was a testimonial and not a perquisite; . . . it was not remuneration for services but a personal gift."

The attention of the Legal Profession is called to the fact that the PHŒNIX ASSURANCE COMPANY Ltd., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS) invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22, Lincoln's Inn Fields, W.C.2; and throughout the country.

A Conveyancer's Diary.

Personal Representatives' and Trustees' Power of Appropriation.

Section 41 of the Ad. of E.A., 1925, gives a personal representative a wide power to "appropriate any part of the real or personal estate, including things in action, of the deceased in the actual condition or state of investment thereof . . . in or towards satisfaction of any legacy . . . or of any interest or share in [the deceased's] property . . . as to the personal representative may seem just and reasonable." It is provided, however, that such appropriation is not to affect prejudicially any specific devise. Further, it must be made with certain consents, namely, when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person, and when made in respect of a settled interest, the consent of the trustee of such interest, or of the person for the time being entitled to the income thereof. An appropriation made under the provisions of the section binds all persons interested in the property of the deceased whose consent has not by the section been made requisite: *ib.*, sub-s. (4).

This new power, which replaces, and is a great improvement upon, that given by L.T.A., 1897, s. 4 (now repealed), is in addition to any other power of appropriation "conferred by law" or by the deceased's will (if any): Ad. of E.A., 1925, s. 41 (6). The power to appropriate "conferred by law," referred to, seems to be the power to partition contained in L.P.A., 1925, s. 28 (3), and which is, among all the "powers conferred by statute on trustees for sale," given to personal representatives by Ad. of E.A., 1925, s. 39 (1).

For normal practical purposes, and whether a testator died before, in, or after 1926, the statutory powers of appropriation are as general and extensive as any that personal representatives are likely to need.

In the case of trustees, however, things are different. The only statutory powers in any way to appropriate that are given to trustees are contained in—

(*a*) L.P.A., 1925, s. 28 (3), which confers on trustees for sale a power to partition land the proceeds of sale of which have, under the trusts affecting them, become absolutely vested in persons of full age in undivided shares. Such partition can only be made with the consent of the persons of full age interested in the net rents and profits of the land until sale.

(*b*) T.A., 1925, s. 15, which enables a trustee (subject to the restrictions as to receipts by a sole trustee) to sever and apportion any blended trust funds or property.

A trustee's power to apportion seems, therefore, a somewhat limited one, though it may be argued that the expression used in T.A., 1925, s. 15 (*f*), are in terms general enough to authorise an appropriation as well as a compromise, composition, abandonment and submission to arbitration.

Where in practice a general power to appropriate would prove useful to a trustee, it is advisable expressly to confer upon him such a power by the trust instrument. This may be done simply by a declaration that he may exercise the like power of appropriation to that conferred by the Ad. of E.A., 1925. Or the trustee may be given a wider power—e.g., the power (as in the Statutory Will Forms, 1925) to appropriate conferred by the Ad. of E.A., 1925, after notice of intended appropriation, but without any of the consents made requisite by that Act.

Even in the absence of any statutory or express power of appropriation, a trustee holding property upon trust for sale, or with power of sale, can, it seems, appropriate any specific part of the trust property towards satisfaction of a beneficiary's share; but the principle upon which such appropriation is made is that the trustee has power to sell the particular property to the beneficiary and to set-off the purchase money against the beneficiary's share; *Re Beverly*, 1901, 1 Ch. 681;

Re Craven, 1914, 1 Ch. 358. Hence, in such cases, the conveyance would presumably have to bear an *ad valorem* stamp as on an implied sale by the trustee to the beneficiary: see *Re Lepine*, 1892, 1 Ch. 210; *Dawson* v. *I.R.C.*, 1905, 2 Ir. R, 69.

The advantage of inserting in a settlement an express power for trustees to appropriate without the consent of the beneficiaries seems, on this account, obvious: claim for *ad valorem* stamp duty will thereby be avoided.

Landlord and Tenant Notebook.

Meaning of "Landlord" for Purposes of Decontrol. —*Continued.*

To hold that a quarterly tenant, or that *any* tenant is the "landlord" for the purposes of s. 2 of the 1923 Act, appears to lead to startling results. Take the case of *Oakley* v. *Wilson* itself. If the quarterly tenant was to be regarded as the "landlord" in that case, then if she was in possession herself of the premises on the 31st July, 1923, the premises were clearly decontrolled as from that date. Therefore she—the quarterly tenant—was entitled to charge any rent she pleased from a sub-tenant and to treat the premises as decontrolled premises as far as she and any person holding as tenant from her were concerned.

But what of the relationship between herself and her own immediate lessor. It is submitted, if the principle of *Oakley* v. *Wilson* is correct, that the premises must automatically have become decontrolled for all purposes and as regards all persons who had any interest therein, since according to *Prout* v. *Hunter*, the status of the premises is to be determined by reference to the person who is in actual occupation thereof.

The result therefore of *Oakley* v. *Wilson* may therefore be said to be this, i.e., that it has the effect of decontrolling, as from the 31st July, 1923, every dwelling-house which was in the occupation of a contractual tenant. No other inference, it is submitted, seems possible.

The argument however may no doubt be advanced that the quarterly tenant in *Oakley* v. *Wilson*, had she not sublet the premises, would have been a tenant, but that she became a "landlord" for the purposes of s. 2 immediately she sublet the premises. But a person either is or is not a landlord, and a freeholder would none the less be a "landlord" for the purposes of s. 2 if he happened to be in actual occupation of the premises himself. Therefore, for the sake of consistency, one must say either that the quarterly tenant was the "landlord" for the purposes of s. 2 from the very commencement of her own interest in the premises, or that she never was, and still is not, the landlord. Again, even if one were to say that she became the landlord by creating the relationship of lessor and lessee as between herself and a third person, it may be argued that she became the landlord the instant the relationship was created, and that inasmuch as she was in possession as such landlord at the commencement of such term, the premises were automatically decontrolled by the very creation thereof.

Indeed, to say that any tenant is a "landlord" for the purposes of s. 2, but that he does not become a landlord until he sublets the premises himself, seems to be nonsensical.

There can be no doubt that the decision of the Divisional Court in *Oakley* v. *Wilson*, if correct, will result in a most hopeless confusion, and will have the effect of decontrolling every dwelling-house which was in the possession of any contractual tenant on the 31st July 1923, or which has since that date come into the possession of any such tenant. It is submitted that that decision appears to be entirely at variance with the proviso to s. 2 (1) of the Rent and Mortgage Interest Restrictions Act, 1923, which contemplates three parties, i.e., a *head landlord*, *his tenant*, who may be called a sub-landlord, and an *occupying tenant* (cf. per Mackinnon, J., in *Finey* v. *Gougoltz*, 1926, 2 K.B., at p. 325).

Correspondence.

Claims for Repayment of Income Tax —Evidence of Payment of Tax.

Sir,—We have recently had occasion in connexion with two claims for repayment of income tax to consider the evidence which the Inland Revenue Department is entitled to require before repaying tax by way of rebate, and we think the facts may be of some interest. Section 29 of the Income Tax Act, 1918 provides that "if it is proved to the satisfaction of the General Commissioners that any person" claiming relief "has paid any tax by deduction or otherwise," the General Commissioners may give a certificate upon which the rebate is based. In practice of course the matter is dealt with in nearly all cases by the officials of the Inland Revenue Department, and a custom has grown up of laying down certain rules as to the evidence which can be required from the claimant quite irrespective of the rights of the claimant under the section in question. The particular cases in which we have endeavoured to test the matter are as follows:—

1. We were acting for a client who had been required and had made elaborate returns for the purpose of super tax which had been accepted by the Special Commissioners, and the super tax had been assessed and paid. Our client had omitted to claim his income tax allowances and the claim for this had to pass through the office of the local inspector of taxes. A large proportion of the income was derived from a trust estate, and we put before the inspector the trustees' accounts which had been accepted by the Special Commissioners as evidence of our client's income when it was a question of assessing him to super tax. These accounts showed that the whole of the income derived from the estate had suffered tax prior to payment to our client. The Inspector of Taxes was not satisfied with this and demanded certificates from the trustees on a particular form (R. 185). We submitted that the evidence which had been accepted by the Special Commissioners would also be accepted by the General Commissioners, and we asked that the case might be put in the list for hearing by the General Commissioners, at the same time intimating that if the decision of the General Commissioners was adverse to our contention we should require him to state a case for the opinion of the court. Five days before the day fixed for the hearing by the General Commissioners our client received a cheque for £358 12s. the amount of the rebate claimed by us on his behalf.

2. The second case was of wider application, and is, we think, of considerable interest to solicitors. For many years past we have issued to clients on whose behalf we collect mortgage interest, numerous certificates either on the Inland Revenue Form R. 185 or on a similar form of our own which we have prepared for the purpose of certifying the amount allowed for income tax to the mortgagor on payment of the interest and these certificates had always been accepted by the various inspectors of taxes as sufficient evidence in support of our client's claims for rebate of tax. Recently, however, one inspector of taxes requested us to forward separate forms R. 185 signed by each mortgagor, and when we drew his attention to the fact that our certificate had always been accepted he said that "the instructions had been tightened up by the Board of Inland Revenue," and that any certificate given by us could only be to the effect that tax had been allowed. In reply we referred him to the terms of s. 29 of the Act quoted above and submitted that it was for the General Commissioners to say what is satisfactory evidence of the payment of the tax and not for the Board of Inland Revenue by its instructions to lay down in advance what evidence is to be accepted as satisfactory. We also pointed out that s. 29 only required evidence of the payment by the claimant "*by deduction or otherwise*" and that a certificate of the allowance of the

tax appeared to cover this. We referred to the fact that under r. 4 of No. VIII, Sched. A, the mortgagor is entitled on paying the interest to deduct the tax and that there is no provision in the Act which entitles the mortgagee to require proof from the mortgagor that the tax has actually been paid or to compel the mortgagor to give a certificate of deduction. We reminded the inspector of the decision in *North London & General Property Co., Ltd.* v. *Moy, Ltd.*, 1918, 2 K.B. 439, in regard to the question of rent and argued that although so far as regards rent that decision has been cancelled by s. 26 of the Finance Act, 1926, it showed that as regards mortgage interest the mortgagee was powerless if the mortgagor refused to give a certificate.

In conclusion we asked that the case might be put before the General Commissioners and again intimated that if their decision was adverse to our contention we should ask them to state a case for the opinion of the court. For a long time we could get no reply to our letter, and it was only after we ourselves had written on two occasions to the Clerk to the Commissioners asking that the case might be put in the list for hearing that we received an intimation that this would be done. After a delay of four months, and six days before the case would have been heard by the Commissioners, we received a cheque for the amount claimed in this case also. We think what has happened here shows that the Board of Inland Revenue has no power to insist upon certificates from individual mortgagors, but is bound to accept the certificate of the mortgagee's solicitor that tax has been allowed.

Brighton. STEVENS, SON & POPE.
18th May.

[We are extremely grateful to our correspondents for drawing the attention of the profession to these cases and indicating the lines to take in similiar circumstancs.—ED. *Sol.J.*]

Reviews.

International Law. By The Rt. Hon. THE EARL OF BIRKENHEAD. Sixth Edition. By RONW MOELWYN-HUGHES. London: J. M. Dent & Sons. Price £1 1s.

This book, first appearing as one of Dent's Primer Series in 1899, has now reached its sixth edition. The fifth edition was published in September, 1918, and it has therefore fallen to the lot of the present editor, Mr. R. Moelwyn-Hughes, to deal with some of the most stirring and fruitful years in the history of International Law. We believe that the general conclusion which will be formed by those who read and use this edition is that he has discharged this difficult task in a manner which would be expected of a man of his record at the university. Amidst the necessarily large amount of new matter we may mention the following: a new chapter on the League of Nations, too short we venture to think, even when the other passages in the work dealing with League topics are included; a new chapter on the Permanent Court of International Justice; very considerable revision of the chapters on Blockade and Contraband; new pages on the law of the air in peace and in war, on gas warfare, war zones, and many other matters which have become important during or since the World War. The editor has a praiseworthy power of compression and has clearly exercised restraint in handling the mass of material at his disposal and skill in weaving it into the fabric. In particular, we are glad to notice that he has not attempted to indicate new matter by the use of brackets—a device which irritates the reader by distracting his attention and sooner or later kills any book which aims at giving a statement of the living law. We venture to make a few suggestions for the editor's consideration when it falls to him to produce a new edition. On pp. 193-4 we find the substance of *Continental Tyre Co.* v. *Daimler Co.* given in the text, but we are surprised not to find the case mentioned in the footnotes or in the Table of Cases. In dealing with poison gas the unratified Protocol signed at Geneva in June, 1925, might be mentioned. On pp. 198-201 we expected to find a reference to the fact that Hague Convention VI was denounced by Great Britain in November, 1925. On p. 330 the expression "a pacific or commercial blockade"—for which Mr. Moelwyn-Hughes is not personally responsible—seems to us unfortunate, as it tends to confuse the institution known as "Pacific Blockade," which originated exactly a hundred years ago in the naval operations of Great Britain, France and Russia against Turkey and which does not involve a state of war, with the ordinary war blockade, which may be called strategic or commercial according to its object, but in either case is an incident of war and produces the same legal consequences. We suggest that in the next edition the new system of Conciliation (as distinct from Arbitration), which is embodied in so many treaties, including the "Locarno Pact," entered into in the last seven years, might receive more attention, and that, having regard to the very uncertain state of the present law affecting Contraband and Blockade those two chapters, amounting together to over fifty pages and containing extensive citations from the unratified Declaration of London, would admit of a considerable amount of pruning. The fact that the present volume devotes 189 pages to the law of Peace and 241 to the law of War and Neutrality tends to confirm this impression.

The editor of a book of this character is inevitably embarrassed with more material than he can possibly embody in it and is not inclined to go out into the by-ways to search for it. At the same time we think that in a subject like International Law an editor might have cast his net a little wider. For instance, we have come across no reference to Hyde's "International Law" (the most important work on the subject since the World War) nor to Fauchille's "Droit International Public." These are, however, merely suggestions and do not derogate from our conclusion that Mr. Moelwyn-Hughes has performed an arduous task with skill and discrimination.

The Trial of Herbert Rowse Armstrong. By FILSON YOUNG. Edinburgh: William Hodge & Company, Ltd. 396 pp. 10s. 6d. net.

This is another of that very excellent series of notable British trials produced under the general editorship of Mr. Harry Hodge.

It would be interesting to know whether the general editor selects the subject, or whether the special editor selects his own subject. If the former, Mr. Filson Young has certainly been unlucky, because for sheer unvarnished wickedness his set of subjects would be hard to equal: the Seddons, Crippen, Bywaters and Thompson, and, last of all, Armstrong. It would seem that not one of them could enlist a morsel of sympathy in their well-deserved fate from any right-minded citizen. One cannot help hoping that Mr. Young will, one day, be given the career of some romantic criminal to illumine with his facile pen. If criticism were possible of so excellent a series, it would be that too many modern crimes have been included in it lately. One almost wonders why Armstrong was selected. Was it because of his steely blue eyes, or was it because of the pitiful loyalty of his rather queer wife, or was it because of the tragedy of his innocent little children, or because of his so-called respectability? All these reasons seem insufficient, even when aggregated together, to justify the waste of time devoted to the career of a man who, after all, was merely a very avaricious, somewhat ignorant, and blundering poisoner. As Mr. Justice Darling said, in passing sentence of death, that not only did he concur in the verdict of the jury, but he considered that it was the only one which men who had any regard to their oaths could have returned on the evidence which had been given. In spite of this statement, there was probably the usual petition for

reprieve signed by the foolish. What if there was? What if the motive in the eyes of decent people was inadequate. That does not say that it was inadequate in the eyes of such a man as Armstrong, and interest in the motive vanishes. What of the defence that the poor wife committed suicide? Was it really a serious defence on the evidence of the Crown? That line of investigation would not interest students of criminology much in this case. What is there left? Just a despicable little pettifogging solicitor grown too big for his boots in a little town where he ought only to have been a solicitor's clerk, into whom the devil entered to murder his wife for a small measure of greed for advancement, and just an honest local doctor, who did his duty to the community as a good citizen; and then the excitement in the little town, and then justice swift and certain, and then the felon's end on the gallows. Let us leave him there. But read the book, for every murder trial has some measure of interest and fascination, and in the hands of such a master as Mr. Filson Young one can almost become eager even in reading such a sordid tale. M.

Books Received.

The Psychology of Murder. A Study in Criminal Psychology. Andreas Bjerre (Doctor of Laws). Translated from the Swedish by E. Classen, M.A., Ph.D., M.R.S.L. 1927. Demy 8vo. pp. ix and 164. Longmans, Green & Co., Ltd., 39, Paternoster Row, E.C.4, New York, Toronto, Bombay, Calcutta and Madras. 9s. net.

The Law of Intestacy. A. W. Peake (Barrister-at-Law). Large Crown 8vo. pp. ix and 62, with Index. Gee & Co. (Publishers), Ltd., 6, Kirby-street, E.C.1. 5s. net.

A Study in the Jurisdiction of the Resident Magistrate's Court (Law 28 of 1904). F. C. Tomlinson, Barrister-at-Law. Black River.

A Handbook of Commercial Law. F. G. Neave, LL.D. (Lond., Gold Medallist), Solicitor. 1927. Third Edition. Demy 8vo. pp. xxiii and 308 (with Index). Effingham Wilson, 16, Copthall-avenue, E.C.2. 8s. net.

Nationality and Naturalisation Laws of Certain Foreign Countries.—Miscellaneous, No. 2. 1927. Cmd. 2852. Paper. 91 pp. H.M. Stationery Office. 1s. 6d. net.

The Irish Law Times and Solicitors' Journal. Vol. LXI, No. 3147. Saturday, 14th May, 1927. John Falconer, 53, Upper Sackville-street, Dublin. 1s. net.

The English and Empire Digest. With Annotations. Vol. XXXIII, Local Government to Markets and Fairs. pp. xci and 569. Butterworth & Co., Bell-yard.

The Bombay Law Journal. Vol. IV. No. 12. May, 1927. The Maneck Printing Press, Arrand Hiras, Tribhuran road, Bombay, 4. Re. 1.8.

Reminders for Conveyancers, with references to some of the best Precedents. Fifth Edition. Herbert M. Broughton, Barrister-at-Law. 1927. pp. xv and 109. London: Field Press, Ltd., "Law Times" Office, Windsor-house, Bream's-buildings. 4s. 6d. net.

Shipmaster's Handbook to the Merchant Shipping Acts, being a Practical Guide to the Acts and Regulations for Shipmasters and all connected with the Mercantile Marine. Third Edition. Sandford D. Cole, Barrister-at-Law. 1927. pp. xvi and 254, with Index. Medium 8vo. Brown, Son & Ferguson, Ltd., Nautical Publishers, Glasgow, 12s. 6d. net.

Carriage of Goods by Sea Act, 1924, including the Rules relating to Bills of Lading (The Haig Rules), with Notes. Robert Temperley, M.A., Solicitor. Third Edition, Revised and Enlarged and with Appendices. By the Author and John Rowlatt, B.A. 1927. Medium 8vo. pp. xv and 128, with Index. Stevens & Sons, Ltd. 7s. 6d. net.

The Law of Carriage by Railway. Henry W. Disney, B.A. (Oxon.), Barrister-at-Law. Seventh Edition. Humphry Mackworth Paul, Barrister-at-Law. 1927. Medium 8vo. pp. xxi and 330, with Index. Stevens & Sons, Ltd. 12s. 6d. net.

The Irish Law Times and Solicitors' Journal. Vol. XLI. No. 3147. 21st May, 1927. John Falconer, 53, Upper Sackville-street, Dublin. 1s. net.

Minnesota Law Review. Journal of the State Bar Association. Vol. II, No. 6. May, 1927. The Faculty and Students of the Law School of the University of Minnesota, Minneapolis, Minn. 60 cents.

The Law Relating to Theatres, Music Halls and Other Public Entertainments and to the Performers therein, including the Law of Musical and Dramatic Coypright. 1927. Sidney C. Isaacs, B.A., LL.B., Barrister-at-Law, with a Foreword by The Hon. Mr. Justice McCardie. Medium 8vo. pp. xxxiii and 448 (with Index). Stevens & Sons, Ltd. 20s. net. W.P.H.

Mr. Justice Eve on Publicity.

The Institute of Chartered Accountants, at the invitation of the Lord Mayor, held its annual dinner in the Mansion House recently. It was attended by the Lord Mayor and the Sheriffs, and by many members of the legal profession and representatives of the banking and commercial community. Owing to the illness of the president, Sir Arthur Whinney, the chair was filled by Mr. R. H. March, the vice-president.

Sir William Plender (past president) proposed the toast of "the Legal Profession." He said that a system of law made by the people and for the people, breathing their spirit and conforming to their sentiments, was not only an expression of the nation's mind and character, but a main factor in its greatness. The law of England stood to-day, as always, the guardian of the rights of individual citizens, and it deserved and received the confidence of the community.

Mr. Justice Eve, responding, said he heartily supported the protests which from time to time had been uttered by the Lord Chief Justice and others against attempts of the Executive to invade the territory of magistracy. If the administration of justice was to be continued in this country upon the principles on which it had been firmly established, and which alone were acceptable to the people, it was of the utmost importance that the line of demarcation between the Executive and the magistracy should be studiously and strenuously maintained. He did not want to see a tribunal sitting in private—untrammelled by the salutary regulations affecting procedure and the admission of evidence obtaining in our courts and untrammelled by that corrective criticism promoted and stimulated by publicity—and occasionally wrapping up its ultimate finding in a report made by the department which created it. They could depend upon it that our courts offered a more satisfactory arena for the assertion of right and the remedy of wrong than any Government Department, however august, and he hoped every effort would be made to control any insidious attempt of the Legislature to curtail the right of every citizen to have recourse to the courts. (Cheers).

Sir Philip Cunliffe-Lister (President of the Board of Trade) replying to the toast of "Trade and Commerce," proposed by the Chairman, said that the future was full of hope for our trade and industry, but mutual confidence, good will and efficiency in our industries were essential. He hoped that that institution would be in the forefront in effecting that combination.

Those present included: Lord Glendyne, Lord Merrivale, Lord Wrenbury, Lord Blanesburgh, Lord Buckland, Lord Greenway, Lord Justice Lawrence, Mr. Justice Tomlin, Sir Arthur Steel-Maitland (Minister of Labour), Sir William Peat, Sir Woodburn Kirby, General the Hon. Sir Herbert Lawrence, Sir Ernest Glover, Sir George Courthope, M.P., Sir Claude Schuster, Mr. F. W. Pixley, Mr. William Cash, Colonel Gretton, M.P., Mr. G. R. Freeman, Mr. W. J. Boyle, Sir William Leese, Sir Harold Bowden, Sir William Berry, Sir John MacLeod, Sir Frank Dicksee, P.R.A., Sir Henry Buckingham, M.P., Sir James Cooper, Sir Harry Goschen, Sir Charles Stewart, Sir Lynden Macassey, K.C., Sir Otto Niemeyer, Sir Russell Scott, Sir Alfred Eyles, Sir George Barnes, Sir Josiah Stamp, Sir George Barstow, Sir Vincent Baddeley, Sir William Llewellyn Sir Herbert Morgan, Sir Gilbert Garnsey, Sir Joseph Burn, Sir Mark Jenkinson, Sir Samuel Chapman, M.P., and Sir David Murray, R.A.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day All questions should be addressed to The Assistant Editor, "The Solicitors' Journal," 94-97, Fetter Lane, E.C.4, be typewritten on one side of the paper only, and be in triplicate. Each copy to contain the name and address of the Subscriber. To meet the convenience of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

RESTRICTIVE COVENANTS—REGISTRATION.

791. *Q.* After 1925, a vendor conveys land on sale to a purchaser who enters into new restrictive covenants in the conveyance and the vendor's solicitor dates the conveyance with the date of a certain day, and on that day sends by post to the Land Registry an application for registration of such covenants and completes the purchase on the following day with the purchaser's solicitor and gets the mortgagee's. solicitor to date with the date of the day of such completion a mortgage by the purchaser, for a principal sum required by him to enable him to complete his purchase. Will the purchaser and his successors in title, including his above mortgagee, be bound by the above covenants? And could not the difficulty so far as registering restrictive covenants is concerned dealt with in s. 4 of the L.P.(Amend.) Act, 1926, have been more conveniently and as efficiently surmounted by providing that where in a conveyance of a legal estate in land on sale for money or money's worth executed after the commencement of the L.C.A., 1925, a purchaser enters into an express new restrictive covenant such covenant shall be void against a subsequent purchaser of the land to which such covenant relates, or any part thereof, or of any interest therein, unless such covenant is registered in the register of land charges within (say) fourteen days from the completion of the original purchase?

A. The purchaser will be bound by the restrictive covenants in virtue of his having covenanted in the conveyance and so will all his successors in title, taking with notice other than purchasers for money or money's worth. The mortgagee is such a purchaser, and if he has obtained an official certificate of search not more than two days before the date of the mortgage and the land charges in respect of the covenants had not been registered at the date of the certificate or priority notice given the mortgagee and those taking title through him will not be bound: L.P. (Amend.) Act, 1926, s. 4 (2). It is to be observed that the time of receipt of an application for registration at the land registry is deemed to be the time of registration. This is important if the mortgagee has no official certificate of search. No doubt the suggestion made by the questioner was examined by the amending committee and the draftsman; probably the fact that it would effectively block dispositions from being made for fourteen days after any transaction was considered ample justification for its rejection.

UNDIVIDED SHARES IN SETTLED LAND SUBJECTED TO A TRUST FOR SALE.

792. *Q.* Referring to Q. 695 and the answer thereto, could it not be construed that A B's children, having all attained twenty-one years' of age, were on the 31st day of December, 1925, seised of the property as tenants in common, having for some time prior thereto been in possession or in receipt of the rents and profits of the property as beneficial owners? If that is so, there would be nothing to prevent the beneficiaries disposing of the property as absolute owners after the coming into operation of the L.P.A. (or, as a matter of fact, prior thereto if the facts as stated in the question are correct.) The above, of course, must be read subject to the fact that if there were more than four tenants in common the estate would have vested in the Public Trustee, subject to its being divested in the proper manner.

A. This is another view of the facts the adoption of which would give a purchaser a good title.

ADMINISTRATION—TO WHOM GRANTED—NOMINEE OF WIDOW —ADMINISTRATION—SURETIES.

793. *Q.* A client has just died intestate, leaving a widow, but no children. The only next of kin is his sister. The estate consists of "personal chattels," and about £1,100 net personalty. The widow consequently takes absolutely the whole except as to £100, and as to this she takes a life interest, and the sister the reversion. Apparently there must be two administrators (A. of E. Act, 1925, s. 12). Would you very kindly tell me:—

(1) Must the widow and the sister jointly apply for the grant, or can a friend of the widow act as the second administrator? The sister's interests are opposed to the widow's, because almost the whole of the estate consists of a business in which the deceased and the sister were partners.

(2) Have rules been made under s. 11 of the Act, dispensing with sureties where there are two administrators?

A. (1) Under s. 73 of the Court of Probate Act, 1857 (now repealed by the A.E.A., 1925, 2nd Sched.) the court would not, save in very special circumstances, grant administration to the nominee of the person entitled to the grant, see *re Burch*, 1861, 2 Sw. & Tv. 139 (but if the widow is aged and infirm see *re Roberts*, 1858, 1 Sw. & Tr. 64). The court's discretion is, if anything, more limited by s. 162 of the J.A., 1925 than by s. 73 of the Court of Probate Act, so, in the absence of special circumstances as above, the application must be made by the widow and sister. The administrators will hold on trust for sale under s. 33 (1) (*a*) of the A.E.A., 1925, so in theory, the interests of the widow and sister should be the same, though possibly they might not be at one on the question of postponing the sale under the L.P.A., 1925, s. 25 (1). Perhaps, the widow might find it best to purchase the sister's reversion. The questioner will note that s. 12 of the A.E.A., 1925 is repealed by the J.A., 1925, 6th Sched. and re-enacted s. 160 (1).

(2) Section 11 of the A.E.A., 1925 was repealed by the J.A., 1925, 6th Sched. and replaced by s. 167 (1) of the latter Act, by which the requirement of sureties is in the discretion of the registrar. As examples of the former practice, which no doubt would weigh with a registrar, see *re Cory*, 1903, P. 62 and *re Rushworth*, 1908, 25 T.L.R. 128. See also as to the new practice, the A.P., 1927, p. 2410, 'Sureties.'

WILLS—LAPSE SHARE OF RESIDUE.

794. *Q.* A died in May, 1916, having by his will dated June, 1896, devised and bequeathed unto his trustees "all the remainder of my estate real and personal upon trust that my trustees shall sell call in and convert into money such part of my estate as shall not consist of money and after payment of my just debts funeral and testamentary expenses shall divide the residue thereof equally amongst my three children, viz. X, Y and Z as tenants in common." X and Y were the only daughters, and Z the only son. The husband of X witnessed the will. The residue consists entirely of two freehold houses. Who is entitled to the lapsed share?

A. The gift to X was void under the Wills Act, 1837, s. 15; it is to be observed that the gift is not a gift to a class as in *Re Coleman & Jarrow*, 4 Ch. D. 172, but to three named persons, X, Y and Z. The rule applicable to such a case is

that the lapsed share of X, being of a residue, does not fall into residue, but is undisposed of, and as the testatrix died before 1926, goes to the heir of the last purchaser of the two freehold houses. Who this person is cannot be stated from the facts given. He may be Z, A's son.

CONVEYANCE—MISTAKE IN DESCRIPTION OF PARCELS—INCONSISTENCY—TITLE.

795. *Q.* My firm are acting for A, who was the owner of a block of property consisting of shop and house above, also building at the rear used as a warehouse, the latter having a separate entrance and no direct communication with the front shop and house. In 1911, A let the shop and house to a firm, B. The lease expired in 1918, when B agreed to purchase property described in the contract as "a piece of land together with the shop and premises . . . and now in the occupation of the purchasers as tenants." B's solicitors drew the conveyance, and the property was again described as being "Now in the occupation of the purchasers," but according to the boundaries the *whole* block was conveyed. No plan was referred to. The rear building has never at any time been in B's occupation. A's agent, C, collected the rent of the whole property until 1911, when lease to B was arranged. A's solicitors then wrote C that rent would be paid by B to them in future, and they had to cease collecting. C apparently assumed this referred to the new letting only and continued to collect rent and manage rear building, and have continued to do so up to the present time, and state they always understood same still belonged to A. Since 1911 A has not received any rent for this rear building from C, nor had any communication with C with reference thereto, although presumably C was still collecting the rent on A's behalf. A states that he was under the impression that C was accounting to A's solicitors for the rent of rear building, and his account being credited with same, as all his affairs were then in their hands, he at that time owing moneys to them on second charge, which was paid off after sale. B are now claiming ownership of the rear building and demanding from C rent from date of sale, relying upon the boundaries given in conveyance. Their reason for the omission to collect rent is the illness of their manager "about the time of the purchase" and that the matter was forgotten. A admits that at the time of the sale he entirely forgot about the rear building. C states that in 1918 cheque for rent was forwarded to A, but the same was returned by the postal authorities. At the time A was away from home on account of his health. C appears to have taken no further steps to discover A's whereabouts and has collected the rents up to date without in any way attempting to trace A. On enquiring why C did not get into communication with A or his solicitors on the matter, C states his firm were not aware who was acting for A in the sale. This is incorrect, as correspondence took place between A's solicitors and C at that time and A's whereabouts could easily have been ascertained, he being well-known locally. On completion, all deeds were handed over to B, A's solicitors' attention not having been drawn to the existence of the rear building. Your opinion is desired—

(1) As to whether A is in a position to dispute B's claim.

(2) Whether A has any right of action against C for not accounting for rents.

A. The circumstances recorded above are remarkable, but, as the conveyance stands at present, A would certainly be estopped from contending, as against a purchaser from B, that the whole block, which was apparently conveyed, was not in the occupation of firm B. Therefore, short of compromise or agreement between A and B, litigation is inevitable, and the best advice to A that can be given here is that the case should be placed before counsel at once, with instructions to draw the necessary writ, when a *lis pendens* could be registered against B nd A's claim safeguarded. An action in the Chancery Division for rectification on the ground of mistake appears to be indicated, when A, the members of the firm B, and C, and their legal advisers can all be examined and cross-examined and the contract and other relevant documents placed in evidence. Obviously no reliable opinion on the merits could be given without proofs of witnesses and copies of documents, and the judge will have to deal as best he may with the extraordinary circumstance that, since the end of the war, neither side has received or even claimed a penny of rent in respect of the back premises. On the facts stated C would appear to be a witness for A, and A, who "entirely forgot about the rear building," rather a bad witness for himself, though he can hardly win his case without going into the box. His rights against C will, of course, depend on the result of the action.

DEATH OF OWNER IN FEE OF LAND IN 1898—PRESUMED INTESTACY—WILL JUST FOUND—TITLE.

796. *Q.* A was the owner of a freehold house subject to a mortgage. In 1895 the mortgagee called his money in but A was unable to find the necessary funds and requested his son B to help him. B therefore paid off the mortgage and took up the deeds. He did, however, not obtain a transfer of the mortgage or any receipt from the mortgagee. B has, however, had possession of the deeds ever since, and the mortgagee is now dead. In 1898 A died, and, as no will was forthcoming, it was assumed he died intestate. He left B and another younger son and two daughters him surviving. B thus took the property as heir at law. All the children lived in the house until 1904 when B got married and left them. From 1916 to 1924 B made his brother and sisters pay him a small rent for their occupation. Since 1924 B has again been living in the house and has not charged any rent. One of the daughters has now produced a will signed by A, which is undoubtedly genuine, leaving his property to his four children in equal shares, and B wishes to know where he stands. He has informed his sister that he claims to be mortgagee of the house, but this is questioned and he has no proof to show that he paid off the mortgage apart from the fact that he has the deeds. B wishes to sell the house and if his brother and sisters are not conciliatory and disposed to help he proposes to make a title under L.P.A., 1925, 1st Sched., Pt. II, 3, which appears to vest the mortgagee's legal estate in him. Will you please advise whether such a title may be given coupled with suitably framed conditions in the contract for sale requiring the purchaser to make the necessary assumptions, or whether B has now obtained a title by possession under which he can sell, or whether it will be necessary for the will to be proved and the interests of the three other parties satisfied ?

A. From the form of this question it is assumed that the heir has acted without fraud or concealment, and the devisees under the recently discovered will without negligence. Thus no one is in fault. The testator died in 1898, and therefore after the operation of the Land Transfer Act, 1897. It is not stated whether B took out letters of administration to his father. If he did so, then in accordance with *Hewson* v. *Shelley*, 1914, 2 Ch. 13, the real estate vested in him for all administrative purposes. If not, and the executors of the will obtain probate, they will be deemed to have had the land, or at least the equity of redemption in it, vested in them as from the testator's death. The heir, on this footing, was, possibly, a constructive trustee, but hitherto, with no notice of his trust. Perhaps the soundest view is that he was a mere disseisor. The opinion is here expressed that the Statutes of Limitation will run in favour of a constructive trustee who has no notice of his trust, see *Petre* v. *Petre*, 1852, 1 Drew 371, at p. 393. On the other hand, if the heir took out letters of administration, there is very recent authority to the effect that he was an express trustee, see *Toates* v. *Toates*, 1926, 2 K.B. 30, though it is doubtful whether the express trust of an administrator would include beneficiaries under an unseen and unknown will. There is also authority that the statute will run against persons who do not pursue their remedies by

reason of ignorance of their rights, see *Granger* v. *George*, 1826, 5 B. & C. 149, and such a title was both acquired and forced on a purchase in *re Atkinson and Horsell's Contract*, 1912, 2 Ch. 1. The result of some research—perhaps a remarkable result, in the absence of negligence in the person conducting the research—has been failure to disclose any direct English authority on the Statutes of Limitation between the heir on the one hand and the devisees of a long-lost will on the other. The opinion here given is that in the circumstances above, the statutes have run against the devisees, and in favour of B, who has throughout asserted his title, though it is fair to mentioned that there is American authority otherwise, see *Spruance* v. *Darlington*, 7 Del. Ch. 111. If the statutes have run, B is owner of the house and can sell accordingly, see *Atkinson* v. *Horsell*, *supra*. The questioner will please note that this answer does not imply assent to his proposition as to the L.P.A., 1925, 1st Sched., Pt. II, para. 3. If the will is now proved, it will not affect the operation of the statutes, since the executors' title relates back to 1898.

Pre-1926 Deed of Arrangement—Effect on Title.

797. *Q.* A (debtor) in 1920 executed a deed of assignment for the benefit of creditors to B (trustee). The creditors were subsequently paid and accepted a composition in settlement. Part of the estate of A consisted of freehold property (subject to a mortgage and further charge), and no reconveyance by the trustee B to the debtor was made of the property comprised in the assignment. The trustee B died in 1924 intestate and no grant of administration of his estate has been obtained. A executed a second deed of assignment for the benefit of creditors in 1927 to C (trustee) who has contracted to sell the freehold property to D. Notice of the first deed of assignment has come to the knowledge of the solicitors acting for D, although it is not disclosed on the abstract. Did the legal estate vest on the 1st January, 1926, in A subject to the mortgage by virtue of L.P.A., 1925, Pt. II, para. 3 and 6A? If so, the trustee C can make title, if not the trustee C has no legal estate and presumably representation of B must be obtained before title can be made. If B was a "trustee for sale" within the meaning of the words used in para. 3, it is contended the vesting clauses of the schedule do not apply, and that the legal estate must be got in from B's representatives?

A. Whether the trustee of a deed of arrangement has a trust for sale or not will depend on the terms of the instrument, but the usual provision was to give him a power of sale only to pay debts, with an alternative clause requiring him to reconvey to the debtor when the debts were paid or satisfied. If the deed of 1920 was in this form, and the debts were satisfied on 1st January, 1926, the opinion here given is that paras. 3 and 6 (*a*), *supra*, applied as suggested, and A then took the fee subject to the mortgage term or terms. An alternative argument, if the deed was within the definition in the Deeds of Arrangement Act, 1914, and (as presumably is the case) has not been registered under the L.C.A., 1925, is that it is void as against a purchaser, see ss. 8, 9 and 20 (3).

Grant of Annuity by Insurance Company—Signed Proposals.

798. *Q.* There are numerous cases where decisions have been given regarding the liability of insurance companies to policy holders where disputes have arisen as to the policies varying from the signed proposals, but I have been unable to find any decision reported in the converse case of an annuity purchased from an insurance company. If an annuity bond issued by an insurance company appears to vary from the signed proposal, may it be assumed as a general principle that the same rules of construction apply conversely?

A. If the grant of an annuity is based on a signed proposal to which the grant refers, and it is so expressed in the grant, the ordinary principles of the law of contract will apply as they do to a policy. Thus, if the grantee represented himself as aged seventy when he was really fifty, and the company discovered the fact, the contract would be avoided by the fraud or misrepresentation as any other contract so based might be avoided.

Settled Land—Death of Tenant for Life since 1925—Beneficiary Tenants in Common—Sale—Procedure.

799. *Q.* Referring to *Q.* 748 and the reply thereto, it occurs to me that B and C, the present trustees, *may* possibly be the Settled Land Trustees under s. 30 (v) of the S.L.A., 1925, and therefore entitled to apply for a grant of representation to A's estate (specially limited). The position is that A (who was the life tenant) was also one of the proving executors of the will, and it is suggested that she, being the tenant for life, was the person who, at the date of the appointment of new trustees, was able by virtue of her beneficial interest to dispose of the settled land in equity for the whole estate, the subject of the settlement. If this reasoning is correct, the matter will certainly be greatly simplified. Will you please let me have your views?

A. This suggestion cannot be accepted, for A could dispose of the settled land, not directly by virtue of her equitable interest, but by virtue of the statute, giving her power to over-ride other equitable interests. Section 30 (1) (v) clearly contemplates the joinder of all persons equitably interested in the appointment. If the statute had allowed the tenant for life alone to appoint, this no doubt would have been provided by direct reference to him as such.

800. *Q.* Further information has come into my possession whereby it appears that A died leaving a will, of which B and C are the executors. Probate granted to them does not appear to exclude the settled land, and therefore I presume that they will be able to sell as special representatives. It appears to me that the point raised in the question above will therefore not now require answering, provided that the suggestion now made is correct?

A. If probate was granted in respect of all land vested in A at her death *Hewson* v. *Shelley*, quoted in the answer to *Q.* 748 and the A.E.A., 1925, s. 27, will apply, and B and C can make title under the L.P.A., 1925, 1st Sched., Pt. IV, para. 2.

Settled Land—Death of Tenant for Life since 1925—Beneficiary Tenants in Common—Sale—Procedure.

801. *Q.* By his will, dated 1901 (whereof three executors were appointed, all of whom proved), testator, who died in the following year, devised certain of his freehold property unto his trustees, upon trust to permit A, his niece, to have the use and enjoyment thereof during her life, and from and and after her death upon trust for all her children who being sons should attain the age of twenty-one years or being daughters, etc., etc., in equal shares. No trust for sale of this property is contained in the will. One of the executors died in 1922 and the remaining two executors appointed B and C to be trustees in 1923 and they themselves retired. A died on the 12th January, 1926, leaving issue four children all of age. Another child (of full age) died in her lifetime a bachelor and intestate. B and C the present trustees of testator's will are still living. It is now desired to sell the property. Is it correctly assumed that B and C will require to take out representation to A's estate especially limited to the settled land and thereafter assent to the vesting of the property in A's children in fee simple, who, having each obtained a vested interest in the proceeds, will (as trustees for themselves upon the statutory trusts) then convey the property and receive the purchase money? If not, what will have to be done in order to carry out the sale? On the death of A the property would appear to have ceased to be settled property, and the possibility of a direct conveyance by the children, without necessity of an assent (having regard to the date of testator's death) being required, is suggested.

A. B and C were trustees and not executors of testator's will, and, since the trustees do not appear to come within the S.L.A., 1925, s. 30 (1) (i) to (iv), sub-s. (3) applies, and the surviving executors are trustees under the Act. Whether the beneficiaries could appoint B and C or others new trustees under s. 30 (1) (v) now the land has ceased to be settled land may some day be decided authoritatively, but meanwhile should not be taken for granted. However, the question of who are to be the special representative of A rests with the probate authorities under the A.E.A., 1925, s. 22 (1), or the J.A., 1925, s. 162, according as A died intestate or testate, and pursuant to the probate rules. When once probate or letters of administration are granted, title as special representatives is established, see *Hewson* v. *Shelley*, 1914, 2 Ch. 13. The grant is absolutely necessary, for until the grant the land is vested in the probate judge on intestacy, see A.E.A., 1925, s. 9, and even if there is a will the special representatives will have no title unless they prove.

The simplest procedure in the circumstances would appear to be sale by the special representatives under the L.P.A., 1925, 1st Sched., Pt. IV, para. 2. Or they can convey to A's children under the S.L.A., 1925, s. 7 (5), upon trust for sale. See also s. 36 (2).

If one of the surviving children is a son, the reversion of the son who predeceased his mother (if he died before 1926) presumably vested in such surviving son as heir, otherwise in the four daughters as coparceners. In either case, the trustees who receive the purchase money should divide into fifths, and should require a grant of letters of administration to the deceased son to be taken, so that they can obtain a proper discharge in respect of his share.

COPYHOLD FOR LIVES—DEATH OF TENANT INTESTATE—ADMINISTRATION—ADMISSION OF WIDOW FOR WIDOWHOOD—DEATH OF WIDOW—INFANT—TITLE.

802. *Q.* In 1914 A.B. was admitted tenant to certain copyhold property for lives, one of which is still in existence. In the same year A.B. died intestate and letters of administration were granted to his widow. It was then open to the widow either (1) to be admitted for her widowhood in which case, according to the custom of the manor, she would be entitled to continue in possession so long as she remained a widow, even though in the meantime the lives for which the property was held might drop, but in the event of re-marriage her beneficial interest would cease and her sons (of whom there were two) would on attaining twenty-one become entitled in equal shares, or (2) to waive her widowhood and apply for admission as administratrix, in which case she would have been accountable to the two sons for two-thirds of the net income of the holding. The widow chose the first alternative and was duly admitted for her widowhood. She died in 1927. Under the L.P.A., 1922, the copyhold interest became converted on 1st January, 1926, into a leasehold for lives. One of the sons is still a minor. It is apprehended (1) that on the death of the widow the lifehold interest became vested in the Public Trustee pending the appointment of some other person or persons as personal representatives of A.B., (2) that having regard to the minority interest two administrators should be appointed, who, pending the attainment by the younger son of his majority, should hold the property upon the statutory trust for sale, (3) that the letters of administration should be produced to and marked by the steward of the manor, who will be entitled to be paid the usual fine and fees as on an admission. Assuming the reply to (2) to be in the affirmative will it be necessary for the administrators to execute an assent of assignment to vest the property in the sons or does it automatically vest in the son of full age without the necessity of a fresh grant of administration subject to the provisions of L.P.A., 1925, 1st Sched., Pt. III, 2?

A. It is assumed, in the absence of a statement to that effect, that the lease was not perpetually renewable. In such case the L.P.A., 1922, s. 133, applies. The reference in sub-s. (3) to Pt. VII gives rise to some difficulty, for Pt. VII only consists of two sections, 145 and 146, s. 146 not being applicable and s. 145 dealing with perpetually renewable leaseholds only, and containing no reference to determination by notice. However, taking the 15th schedule to be incorporated into Pt. VII, para. 7 (3) of that schedule, may be presumed to have applied on 1st January, 1926, and, taken in conjunction with the 12th Sched., para. (8), proviso (ii), or the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*c*) (as to these alternatives, see answer to *Q.* 196, p. 461, Vol. 70, and the L.P.A., 1925, s. 202) to have vested a ninety years' lease in the widow, subject to determination by notice on the death of the *cestui qui vie*. On her death this year the property either vested in her special representatives under s. 22 (1) of the A.E.A., 1925, if she died testate, or is vested in the probate judge under s. 9, unless it has been expressly vested in special representatives by a grant under the J.A., 1925, s. 162 (1). In the latter case it is agreed that there should be two administrators under s. 160 (1). The powers and duties of administrators during a minority are indicated in the A.E.A., 1925, s. 39. In answer to the points put—(1) No, the provisions as to the Public Trustee in Pts. III and IV of the 1st Sched. to the L.P.A., 1925, did not apply when there was an adult tenant for life in possession on 1st January 1926. (2) Yes. (3) Section 133 (1) excludes the application of s. 129 of the L.P.A., 1922, in respect of copyholds for lives, so the answer is in the negative, unless the lease imports the obligation. (4) The special representatives must sign an assent (after paying or providing for death duties) or execute a conveyance to the beneficiaries when both are *sui juris*, unless they have previously sold the premises.

House of Lords.

Blatchford v. Staddon & Founds. 4th April.

WORKMEN'S COMPENSATION—INDUSTRIAL DISEASE—LEAD POISONING—NO DATE OF DISABLEMENT CERTIFIED—CLAIM AGAINST A PREVIOUS EMPLOYER—EMPLOYED "IMMEDIATELY BEFORE THE DISABLEMENT"—WORKMEN'S COMPENSATION ACT, 1906, s. 8.

In order to entitle a workman to compensation under s. 8 *of the Workmen's Compensation Act,* 1906, *it is not necessary for him to prove that it was the employment with his last employer which caused his disablement; it is sufficient to prove that his work with his last employer during the twelve months before the disablement was of the same nature as the work to which the disease was due.*

Dean *v.* Rubian Art Pottery, Ltd., 1914, 2 K.B. 213, *over-ruled.*

This was an appeal from an order of the Court of Appeal affirming an award made by the County Court Judge of Devon. The appellant, who was a painter fifty-three years of age, claimed compensation for injury caused by an industrial disease, namely, lead poisoning, from the respondents, who were builders and decorators. The respondents employed the appellant in work involving the handling of lead compounds from 23rd October, 1924, to 12th December, 1924. On 13th July, 1925, he was certified by the certifying surgeon for the district where he had been employed to be suffering from lead poisoning. Notice of disablement was given, and a certificate furnished to the respondents, who appealed to the medical referee, who dismissed the appeal. The appellant thereupon claimed compensation. The respondents denied liability mainly on the ground that the appellant was not employed by them at or immediately before the date of disablement. The arbitration was heard by the county court judge on 22nd October, 1925, when it was proved that before 1918

the appellant was in the Navy, where he was employed as a painter, and was disabled by lead poisoning. In 1918 he was discharged from the Navy, and he then worked as a painter for other employers until 22nd October, 1924, when he started work with the respondents. On 12th December, 1924, he had to give up work with the respondents owing to illness, the symptoms being those of lead poisoning. Upon these facts the county court judge held that the appellant had failed to prove that the disease was brought to a head owing to his employment by the respondents, and the Court of Appeal affirmed his award.

The HOUSE (Lords Sumner, Atkinson, Wrenbury, Carson and Blanesburgh) reversed the decision of the Court of Appeal, being of opinion that in order to entitle a workman to compensation under s. 8 (1) of the Workmen's Compensation Act, 1906, it was sufficient for him to prove that his work with his last employer during the twelve months immediately preceding the disablement was of the same nature and character as the work to which the disease was due; it was not necessary for him to prove that it was the employment with the last employer which caused his disablement. The appellant was therefore entitled to compensation.

COUNSEL: *Edgar Dale* and *Montague Berryman; W. Shakespeare and J. Pratt.*

SOLICITORS: *H. A. Sims & Co.*, for *Alfred Riley & Son*, Blackburn; *Arnold Carter*, for *Dunn & Baker*, Exeter.

[Reported by S. E. WILLIAMS, Esq., Barrister-at-Law.]

Court of Appeal.

No. 1.

De Freville *v.* **Dill.** 11th April.

PRACTICE—TRIAL OF ACTION WITH JURY—PREMATURE FINDING FOR PLAINTIFF BY JURY—EVIDENCE FOR DEFENDANT NOT HEARD—JURY DISCHARGED BY JUDGE—DISCRETION—APPLICATION TO RE-SUMMON JURY.

During the trial of an action for damages for negligence with a jury, when the plaintiff's case had closed and the defendant was giving evidence and under cross-examination, the jury, after asking if they could stop the case, sent a note to the judge with a finding in favour of the plaintiff, although several witnesses for the defendant had still to be called. Counsel for the defendant having refused to submit to judgment against him, the judge discharged the jury.

Held, on an application to re-summon the jury and continue the trial, that the jury having wrongfully given a premature verdict in favour of one side without having heard the other, the judge had an absolute discretion to discharge them and had acted quite properly in doing so.

Application by the plaintiff to have a jury which had been discharged re-summoned and empanelled to continue the trial of the action. The action was one brought by Mrs. May de Freville, the wife of Mr. Geoffrey Philip Herbert de Freville, claiming from Dr. Alfred Vincent Dill, a medical practitioner, damages for his alleged negligence in certifying her to be a lunatic on 9th June, 1926. Damages were also claimed for alleged assault and false imprisonment. The defendant pleaded that he signed the certificate in good faith and that he acted with reasonable care. He said that his conclusions regarding the plaintiff's condition at the time of her certification were correct. The plaintiff called fourteen witnesses, and had closed her case. The defendant had given his evidence in chief and had been cross-examined for about an hour and a half when, the cross-examination not being completed, the foreman of the jury asked Avory, J., whether the jury could stop the case. The judge said: "It depends entirely what views you take as to the evidence." He then told the jury to put their message to him in writing. The foreman did so and handed it to the judge, who said that it was a finding by the jury that the defendant had been negligent, and returning a verdict for the plaintiff. Counsel for the defendant made no application for the jury to be discharged, but said that he could not consent to judgment in the circumstances. Thereupon the judge said that the proper course for him to do was to discharge the jury, as they had given a verdict without having heard material evidence for the defendant. The plaintiff then applied for an order to re-summon the jury, on the ground that the jury had acted in ignorance, and that that was not sufficient to entitle the judge to discharge them.

The COURT, without calling upon counsel for the defendant, dismissed the application.

Lord HANWORTH, M.R., in giving judgment, said that the notice of motion was a most unusual one. Having stated the facts, his lordship said that the words used by the jury went far beyond a mere indication of a view passing through their minds. They were only consistent with an intention to stop the case without having heard the rest of the evidence for the defendant. It was plain that such a verdict must be bad. It was contrary to the oath taken by the jurors themselves well and truly to hear the case and to decide it in accordance with the evidence. That meant the whole of the evidence and not a part only of it. The intervention offended against the basic principles of justice. It was argued that Avory, J., had not exercised his discretion judicially and ought to have allowed the case to go on. In his (the Master of the Roll's) opinion he acted quite correctly. It was quite plain from the observations of Lord Shaw in *Ural Caspian Oil Corporation Limited* v. *Hume-Schweder, The Times*, 31st July, 1913, that it was for the judge to decide whether to go on or to stop the case because it was not right for proceedings to continue before a jury which had returned a premature verdict. He (his lordship) would be very sorry to say anything which might have the effect of limiting or impairing the discretion of a judge to discharge a jury in similar circumstances. The application must be dismissed with costs.

SCRUTTON, L.J., who said that the paper handed in by the jury showed that they were entirely ignorant of the most elementary principles of the administration of justice, delivered judgment to the same effect, and SARGANT, L.J., concurred.

COUNSEL: *J. W. J. Cremlyn; Singleton*, K.C., and *W. H. Gattie.*

SOLICITORS: *Harry Coulson; Le Brasseur & Oakley.*

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re **Scott; Scott** *v.* **Scott.**

Clauson, J. 4th November 1926.

ADMINISTRATION—PRACTICE—SETTLED SHARES—PAYMENT OUT—SEPARATE SETS OF TRUSTEES.

The Court will, in certain circumstances, direct transfer of funds in court in an administration action out of court to the trustees of the settlement made by the will, and will direct them to divide the same and the trust estate in their hands, together representing the residue of the estate by appropriating the investments to and amongst separate sets of trustees of the settled shares of the testator's children in the proportions to which they were entitled under the will.

The unreported case of Arnold *v.* Robinson, 1874, A. 73, *followed.*

Further consideration. This was a further consideration of an administration action in which new trustees had been appointed of the will of Sir J. M. Scott, and also separate sets of trustees of the three sons and two daughters' settled shares under the will, and the court was asked to make an order making provision for annuities under the will, and subject thereto directing the funds in court to be paid out and dealt with in the manner in which funds were dealt with in a similar unreported case of *Arnold* v. *Robinson*, 1874, A. 73.

CLAUSON, J., after stating the facts, said:—I make the order following *Arnold* v. *Robinson*, *supra*, that the trustees be at liberty to transfer to the respective separate sets of trustees appointed of the shares of the sons and daughters investments appropriated to answer those shares, and I direct that the funds in court be transferred to the trustees of the will for this purpose.

COUNSEL: *Jenkins*, K.C.; *F. H. L. Errington*; *H. O. Danckwerts*; *R. F. MacSwinney*.

SOLICITORS: *Capron & Co.*

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

Bohemian Union Bank *v.* The Administrator of Austrian Property.

Clauson, J. 22nd, 23rd and 24th March.

ALIEN—"NATIONAL OF FORMER AUSTRIAN EMPIRE"—CHARGE ON PROPERTY IN UNITED KINGDOM—ACQUISITION OF NEW NATIONALITY *ipso facto* IN ACCORDANCE WITH THE PROVISIONS OF TREATY OF PEACE WITH AUSTRIA—COMPANY'S NATIONALITY—TREATY OF PEACE WITH AUSTRIA, Arts. 53, 70, 75, 249 (*b*), 263—TREATY OF PEACE (AUSTRIA) ORDER, 1920.

A company in the possession of civil rights in Prague is entitled to be treated as a person who by virtue of Art. 70 *of the Treaty of Peace with Austria obtained Czecho-Slovakian nationality by virtue of that article*, ipso facto.

Action. In this action the plaintiffs claimed a declaration that they were entitled to the possession of the property of the plaintiffs retained by the defendant as being property of nationals of the former Austrian Empire, and for an order for delivery up of the same to the plaintiffs. The facts were as follows: The plaintiff bank was incorporated in 1872 under the laws of the Austrian Empire, its "seat" and place of registration being at Prague. It was an Austrian company up to the date when Czecho-Slovakia was separated from Austria, and was in August, 1918, recognised as an independent republic. Thereafter, having no longer its "seat" in Austria, it ceased to be an Austrian company. By a law dated 28th October, 1918, the new State adopted provisionally *mutatis mutandis* the pre-existing laws of Austria, and as a result of this law companies having their "seat" in Czecho-Slovakia acquired the legal status of Czecho-Slovakian corporations. Under the Treaty of St. Germain-en-Laye, Czecho-Slovakia, being one of the allied and associated Powers who were signatories to that Treaty, secured formal recognition as a free, independent and allied State. The defendant, purporting to act under those provisions of the Treaty whereby allied and associated Powers reserved the right to retain and liquidate all property within their territories belonging at the date of the Treaty to "nationals of the former Austrian Empire," and under the provisions of para. 1 (ix) of the Treaty of Peace Order, 1920 (whereby the right so reserved was exercised), had retained certain property of the plaintiffs consisting of money and securities of the value of over £50,000.

CLAUSON, J., after stating the facts, said: So far as nationality can be predicated of a corporation by figure of speech, as Lord Parker said in *Daimler Co.* v. *Continental Tyre & Rubber Co.*, 1916, 2 A.C. 307, at p. 339, as from 28th October, 1918, the plaintiff bank was a Czecho-Slovakian national. Article 53 of the Treaty provides as follows: "Austria, in conformity with the action already taken by the Allied and Associated Powers, recognises the complete independence of the Czecho-Slovak State." The effect of that is that while before the Treaty the position of Czecho-Slovakia *de facto* was that of an independent State with nationals, including individuals and corporations, Austria recognised by the Treaty that that was the position of Czecho-Slovakia *de jure*. Article 70 provides as follows: "Every person possessing rights of citizenship (pertinenza) in territory which formed part of the territories of the former Austro-Hungarian monarchy shall obtain *ipso facto* to the exclusion of Austrian nationality the nationality of the State exercising sovereignty over such territory." The contention on behalf of the defendant that (having regard to Art. 75, which is the only article which deals with juridical persons) Art. 70 deals with individuals only is not sound, as the presence of Art. 75 leads to the opposite view that Art. 70 extends beyond the ambit of individuals and includes juridical persons as well. By virtue of Art. 249 (*b*), Great Britain and Czecho-Slovakia have the right to retain and liquidate all property within their territories belonging at the date of the Treaty to "nationals of the former Austrian Empire." But it is provided that "Persons who within six months of the coming into force of the present Treaty show that they have acquired *ipso facto* in accordance with its provisions the nationality of an allied or associated Power . . . will not be considered as nationals of the former Austrian Empire." It is true that the expression "nationals of the former Austrian Empire" is not restricted to nationals of the former Austrian Empire who continued to be nationals of the Austrian Republic, that the expression means those who at the dissolution of the Empire were nationals of that Empire: see *Rothschild* v. *The Administrator of Austrian Property*, 1923, 2 Ch. 542. It is admitted that proper notices and information within the time limited by the proviso were given and furnished, and the real question is whether the bank has within the meaning of the proviso acquired *ipso facto* Czecho-Slovakian nationality. Article 263 recognises that both individuals and juridical persons may acquire *ipso facto* nationality under the Treaty. By an Order in Council issued on 13th August, 1920, under the authority of the Treaty, provision was made for the exercise of the power of charging the property of nationals of the former Austrian Empire with the same exemption as that contained in the proviso to Art. 249 (*b*). And by the adoption of the Interpretation Act, 1889, for the interpretation of the Order the expression "persons," unless the contrary should appear, includes "companies." The Order indicates that in the view of Great Britain, not only individuals but companies may acquire Czecho-Slovakian nationality *ipso facto* in accordance with the provisions of the Treaty. But the defendant contends that Art. 70 only applies to individuals, and that consequently there is no article in the Treaty which enacts that companies are capable of acquiring nationality *ipso facto* in accordance with the Treaty. But "citizenship" connotes the exercise of civil rights, and in the judgment of the court a company in the possession of civil rights in Prague is entitled to be treated as a person who, by virtue of Art. 70, obtains Czecho-Slovakian nationality by virtue of that article *ipso facto*. Even assuming that view to be unsound, yet the effect of Art. 53 is to make those who have been *de facto* Czecho-Slovakian nationals Czecho-Slovakian nationals *de jure*, so that it can be predicated of them that they have acquired Czecho-Slovakian nationality *ipso facto*, viz., by mere force of the Treaty in accordance with its provisions. The bank therefore succeeds and are entitled to the declaration asked for.

COUNSEL: *Sir Patrick Hastings*, K.C., and *J. W. Scobell Armstrong*; *Sir Thomas Inskip*, S.-G., and *Stamp*.

SOLICITORS: *Adler & Perowne*; *Solicitor for the Clearing Office*.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Wallems Rederi A/S *v.* Wm. H. Muller and Co., Batavia

MacKinnon, J. 11th March.

CHARTER-PARTY—TERMS OF—DEAD FREIGHT—SHIPOWNER'S RIGHT TO LOAD OTHER CARGO—IMPLIED TERM OF CHARTER-PARTY—DEVIATION.

The charterers of a steamer were held liable in damages for not having complied with the terms of the charter-party to load a

full and complete cargo. It is an implied term of every charter-party that if the charterer has failed in his duty to load, the shipowner has a right to fill up the vacant space, provided that his doing so is reasonable in the particular circumstances.

In this action the plaintiffs, Norwegian shipowners at Bergen, claimed dead freight alleged to be due under a charter-party. The steamer "Storviken," lying at Hong-Kong, was chartered by the defendants under a charter-party, dated the 27th July, 1922, by the terms of which she was to proceed to Batavia for orders to load at not more than four ports on the north coast of Java a full and complete cargo of sugar in bags. The charterers bound themselves to ship not less than 6,460 tons and not more than 7,140 tons. When loaded, the vessel was to proceed to Port Said for orders to discharge (always afloat) at one, two or three safe ports in the United Kingdom and/or certain ports on the Continent. *Inter alia*, the charter-party contained the following clause: "The steamer has liberty to deviate and proceed to and from one or more ports or places in Java in any order . . . to tow and assist vessels in distress, and to deviate for the purpose of saving life or property." In due course the vessel loaded 5,600 tons of sugar at Surabaya, Java, the charterers being unable to ship more, and on the homeward voyage, by arrangement with the owners, called at Madras and discharged some of the sugar there. At Alexandria about 1,000 tons of oil cake were loaded, occupying five days, and the vessel then proceeded to Avonmouth, having been ordered to discharge at Bristol. The Plaintiffs now brought an action for dead freight and failure to load a full and complete cargo, according to the charter-party. The defendants pleaded that a full and complete cargo did not amount to as large a quantity as the plaintiffs contended, and that by loading the oil cake at Alexandria the steamer had deviated from the course of the voyage and had broken the charter contract. It was agreed between counsel that the vessel's capacity was 6,850 tons. Counsel for the defendants submitted that, although it was true that the defendants were unable to load a full and complete cargo the plaintiffs did not treat that inability as a repudiation of the contract, since they went on to perform their part of it, subject to their right to claim damages. The plaintiffs, he contended, were not entitled to use the ship for any other purpose than that stated in the charter-party, unless the defendants agreed. Loading the oil cake had involved a delay of five days, which was a substantial deviation; with respect to deviation he referred to the case of *James Morrison and Co., Ltd.* v. *Shaw, Savill, and Albion Co., Ltd.*, 1916, 2 K.B., 783. He further submitted that the plaintiffs' contention that the oil cake was loaded in order to mitigate damages, was not true, since it was only by chance that the defendants received information of the presence of such oil cake. The plaintiffs certainly could not obtain dead freight in respect of the space used for carrying the oil cake. He referred to: *Aitken, Lilburn and Co.* v. *Ernsthausen*, 1894, 1 Q.B. 773; *Caffin* v. *Aldridge*, 40 Sol. J. 49; 1895, 2 Q.B. 648; *Joseph Thorley, Ltd.* v. *The Orchis Steamship Co., Ltd.*, 51 Sol. J. 289; 1907, 1 K.B. 243, 660; *International Guano Co.* v. *MacAndrew*, 53 Sol. J., 504; 1909, 2 K.B. 360; he also stated that the charter-party contained a clause expressly providing for deviation in certain events, and as the parties had dealt with deviation specifically, no other right of deviation could be implied.

MacKinnon, J., giving judgment, stated the facts, and said that it was agreed that the defendants had committed a breach of their contract by loading 1,250 tons short. The rate of freight payable was 34s. per ton. He referred to the defendants' contention that the action of the plaintiffs in loading the oil cake at Alexandria was a breach of the plaintiffs' duty to prosecute the voyage with dispatch which deprived them of all benefits under the charter-party, and held that whether the plaintiffs intended it or not, their action in loading the oil cake must be taken to have been in mitigation of the damages to which they were entitled from the defendants. A charterer who had failed to load a full cargo could, if sued for damages, rely on the fact that the shipowner had not done his best to mitigate them; a shipowner was at least entitled to load other cargo, and ought to do so in his own interests. His lordship said that the real question here was whether in the circumstances there was any deviation at all. He applied the principle of the "Moorcock," 14 P.D. 64, and thought it was an implied term of every charter-party that, if the charterer failed in his duty to load, the shipowner had a right to take in other cargo to fill up the vacant space, provided that his doing so was reasonable in the particular circumstances. If he had the right to take in other cargo he must also have the right to spend the time needed for loading it. The test was whether his taking in other cargo in the circumstances diminished the damages for which the charterer would be liable. He held that there was in this case no delay in performing the voyage which was not authorised by the implied term, and gave judgment for the plaintiffs, with costs. The amount of damages was agreed at £1,556.

Counsel: For the plaintiffs, *Clement Davies*, K.C., and *Sir Robert Aske*; for the defendants, *D. B. Somervell*.

Solicitors: *Botterell & Roche*; *Richards & Butler*.

[Reported by Charles Clayton, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Price v. Price.

Lord Merrivale, P., and Bateson, J. 27th April.

Appeal from Justices—Summary Jurisdiction (Separation and Maintenance) Acts, 1875 to 1925—Summons for Wilful Neglect to Maintain—Neglect to Maintain a Continuing Offence under Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 1 (1).

Since the passing of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, the offence of neglect to maintain is a continuing offence.

This was an appeal by a husband against an order, dated 26th January, 1927, by the Birmingham City Justices, whereby the appellant was adjudged to have been guilty of wilful neglect to provide reasonable maintenance for the respondent and her one infant child, and to pay the weekly sums of 15s. and 5s. for the respondent and the child respectively.

Counsel for the appellant submitted (*inter alia*) that the respondent had deserted the appellant in June, 1920, and the appellant had paid for the maintenance of the child as long as he was able to, and the respondent had accepted such maintenance on behalf of the child and had always admitted that the same was for the child only and not for herself. Further, the respondent was out of time and should have brought her summons within six months of the last time when the appellant had paid any sum by way of maintenance. Counsel cited *Ellis* v. *Ellis*, 1896, P. 251; and submitted that that case was still good law and was not overruled by the Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 1 (1), whereby the words "and shall by such cruelty or neglect have caused her to leave and live separately apart from him," in s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, are repealed. The repeal of those words did not make "neglect to maintain" a continuing offence. Counsel for the respondent was not called on.

Merrivale, J., said that the offence of neglect to maintain, since the 1925 Act, was now "at large" and a continuing offence.

Bateson, J., agreed.

Appeal dismissed with costs.

Counsel: *Talbot Ponsonby*, for the appellant; *C. Mortimer*, for the respondent.

Solicitors: *H. C. L. Hanne*, for the appellant; *Foster Grave & Jay*, for *P. Baker & Co.*, for the respondent.

[Reported by J. F. Compton Miller, Esq., Barrister-at-Law.]

Pratt *v.* **Pratt.**

Lord Merrivale, P., and Bateson, J. 27th April.

HUSBAND AND WIFE—APPEAL FROM JUSTICES—MAINTENANCE ORDER—RESCISSION ON GROUND OF WIFE'S ADULTERY—PETITION FOR DISSOLUTION ON SAME ADULTERY—PETITION DISMISSED—REVIVAL OF ORDER—FRESH EVIDENCE—SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895, 58 & 59 Vict. c. 39, s. 7—CRIMINAL JUSTICE ADMINISTRATION ACT, 1914, 4 & 5 Geo. 5, c. 58, s. 30 (3).

Justices have power to revive a rescinded order for maintenance upon fresh evidence under s. 30 (3) *of the Criminal Justice Administration Act*, 1914.

This was an appeal from the Leicester City Justices. On the 28th November, 1924, the wife obtained a separation order with an order for payment of 20s. per week maintenance on the ground of the husband's persistent cruelty. On the 25th July, 1925, this order was rescinded by the justices on the ground of the wife's adultery. The husband filed a petition in the High Court for dissolution of his marriage based on the same facts upon which the justices had rescinded their order. The petition was heard at the Leicester Assizes on the 5th November, 1926, and was dismissed by the judge of assize, who was not satisfied with the evidence of adultery. On the 18th November, 1926, the wife took out two summonses before the justices (*a*) for a revival in accordance with the provisions of s. 30 (3) of the Criminal Justice Administration Act, 1914, of the previous order since rescinded; and (*b*) for maintenance, alleging desertion as on and from the date of the dismissal of the petition for dissolution of marriage. Summons (*b*) was adjourned *sine die*. On summons (*a*) the justices revived the previous order on the ground that the judgment of the judge of assize was binding on them and was fresh evidence before them upon which they could revive their previous order. The husband appealed on the grounds that the decision of the justices was bad in law, that there was no power to revive the order, that there was no admissible evidence to support the revival of the order, and that the whole matter was *res judicata*. Counsel for the husband submitted that s. 30 (3) of the Criminal Justice Administration Act, 1914, did not apply to this case, and that the relevant section was s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, under which there was no power to revive an order. That the question of adultery once having been decided by the justices was *res judicata*. Further, that even if the justices had such a power, it could only be exercised on fresh evidence, which was not available at the original hearing, and that the proceedings at the trial of the petition were not admissible in evidence before the justices. He referred to *Colchester* v. *Peck*, 1926, 2 K.B. 366, and *Johnson* v. *Johnson*, 1900, P. 27.

Lord MERRIVALE, P., after stating the facts, said: The decision of the justices that the wife had committed adultery was not a conclusive finding. The justices' court was not a Court of Record. On the other hand, the judge of assize could make a conclusive finding that there had not been any adultery on the part of the wife, which after the time for appealing had passed, was conclusive against the whole world. That decision was fresh evidence brought to the knowledge of the justices and enabled them under the Act of 1914 to revoke, revive or vary their previous order. The court below had taken a reasonable course and one within its jurisdiction. The appeal failed.

BATESON, J., agreed.

COUNSEL: *W. K. Scrivener*, for the appellant husband; *C. E. Loseby*, for the respondent wife.

SOLICITORS: *Peacock & Goddard*, for *Basil W. Edwards*, Leicester; *H. W. Clarkson*, for *Herbert Simpson & Bennett*, Leicester.

[Reported by J. F. COMPTON MILLER, Esq., Barrister-at-Law.]

In Parliament.

Questions to Ministers.

ENFORCEMENT OF THE FRANCHISE.

Mr. BALDWIN, Prime Minister (Bewdley), stated, in reply to Lieut.-Colonel Moore (Ayr Burghs, U.), that he did not propose to consider the advisability of introducing legislation to enforce the exercise of the franchise before the next General Election.

RELIEF FROM INCOME TAX.

Mr. SKELTON (Perth, U.) asked the Chancellor of the Exchequer whether he was aware that some property owners have been in the habit of presenting their claims for relief from income tax, Sched. A, in respect of maintenance expenditure, after payment of the first instalment of tax for the year to which the claim relates, but in time to have the relief allowed as a set-off against the second instalment of tax falling due in July; and whether in future it would be necessary for the property owners in question to pay the whole of the Sched. A tax in January and to obtain any relief to which they might be entitled in respect of maintenance expenditure by way of repayment of tax.

Mr. CHURCHILL, Chancellor of the Exchequer (Epping): The answer to the first part of the question is in the affirmative. In view of the fact, however, that claims for relief in respect of expenditure on maintenance, etc., are required to be based upon the average expenditure incurred in the five years preceding the year of assessment, it would appear that, speaking generally, property owners can, if they so desire, lodge their claims soon after the commencement of the tax year. Where that is done, no difficulty will usually arise in dealing with the claims in ample time to enable the relief to be set against tax due on 1st January.

Legal Notes and News.

Appointments.

The Council of the Society of Incorporated Accountants and Auditors have unanimously elected as President for the ensuing year Mr. Thomas Keens, F.S.A.A. (Messrs. Keens, Shay, Keens and Co., Incorporated Accountants), Luton, London and Bedford, and as Vice-President, Mr. Henry Morgan, F.S.A.A. (Messrs. Morgan Bros. & Co., Incorporated Accountants), London.

Mr. W. E. VERNON has been elected a Bencher of the Middle Temple. He was called to the Bar in 1889.

Professional Partnerships Dissolved.

ERNEST BARLOW AND HAROLD GARRETT, Solicitors, Stockport and Manchester (Barlow, Garrett & Co.), by mutual consent. E. Barlow will continue the business under the style of "Barlow & Co."

Wills and Bequests.

Mr. Thomas Sproat, Rock Ferry, Cheshire, a member of the firm of Messrs. Morecroft, Sproat & Killey, Solicitors, Liverpool, left estate of the gross value of £38,417. He gives on the death of his wife £1,500 to Winchester College for scholarships or exhibitions to Oxford University; £1,500 to Rugby School for scholarships or exhibitions at Oxford University; £500 to the Provost and Town Council of Kirkcudbright, the income to be applied for the purchase of coal or other necessaries for the poor at Christmas time or the New Year.

Mr. Francis James Griesbach, solicitor, of Ashchurch Park Villas, Hammersmith, W., a member of the firm of Messrs. Beale and Co., Westminster, left estate of the gross value of £6,662.

Mr. Ernest Radford, Kersal, Salford, and Manchester, senior counsel and leader of the Manchester Chancery Bar, left estate of the gross value of £22,424.

Mr. Percy Copeland Morris, Elm Park-gardens, Chelsea, barrister-at-law, left estate of the gross value of £79,528.

NEW SOUTH WALES 5½ PER CENT. CONVERSION LOAN 1947/1957.

We are officially informed that conversions amounted to about £6,500,000 and cash applications to about £6,000,000, and that cash applicants up to £1,000 will receive allotment in full, and above £1,000 about 68 per cent.

Allotment letters were posted on Wednesday evening.

UNPAID CALLS ON SHARES.

The Anglo-German Mixed Arbitral Tribunal (First Division), consisting of Dr. Helge Klaestad (President), Mr. R. E. L. Vaughan Williams, K.C. (British member), and Dr. Zacharias (German member), sitting in London recently, delivered judgment in favour of the claim of the Thor Cotton Spinning Company, Limited, British nationals, brought under Art. 296 of the Treaty of Versailles, against Otto Hoffmann, a German national, for £300, together with 5 per cent. interest thereon from 31st October, 1914, in respect of unpaid calls on shares.

It appeared that in 1907 Mr. Harold West, a shareholder in the Thor Cotton Spinning Company, Limited, transferred his holding of 150 shares of the nominal value of £5 each, to the debtor, who was then residing at 20, Wellington-road, Withington, Manchester, and these shares were registered by the creditor company in the debtor's name on 25th June, 1907. Before the transfer, a sum of £75 had been paid on these shares, and between July, 1907, and May, 1910, further calls were paid by Hoffmann, amounting in all to £375. The present claim was in respect of a further and final call of £2 per share, made on 7th October, 1914, and payable on 31st October, 1914.

The debtor denied that he owed the sum claimed, saying that he never had any shares in the creditor company.

The Tribunal, in their judgment, said they had examined the creditor company's register and had ascertained that the creditors' contentions as to the entry therein of the transfer of the 150 shares from Mr. West to Herr Hoffmann was correct. On the facts before them, the Tribunal were satisfied that the Otto Hoffmann who was registered as shareholder in the register, then residing at 20, Wellington-road, Withington, Manchester, was identical with the debtor. Under English law, which was applicable, the register of members was *prima facie* evidence of matters directed or authorised to be recorded therein: Companies (Consolidation) Act, 1908, s. 35. This *prima facie* evidence as to the debtor being a shareholder in the creditor company for 150 shares was confirmed by copies of the debtor's account with the Manchester and County Bank, which, in accordance with the Tribunal's directions, had been produced since the hearing of the case.

Judgment was entered for the claimant company for £300, together with interest at 5 per cent. per annum thereon from 31st October, 1914, until crediting, with £13 as costs.

EIGHTH INTERNATIONAL CONGRESS OF ACTUARIES.

27TH TO THE 30TH JUNE 1927.

The Royal Economic Society and the Royal Statistical Society have accepted the invitation extended by the Committee of the Eighth International Congress of Actuaries to join the Congress. The representatives of the former will be Mr. J. Maynard Keynes, C.B., and Mr. R. G. Hawtrey, of the Treasury, and the representatives of the latter will be Mr. W. Palin Elderton, C.B.E., and Dr. David Heron.

The invitation has also been accepted by the Chartered Insurance Institute, which has nominated as its delegates Mr. R. M. O'Connell, President; Mr. R. Y. Sketch, the Vice-President; and Mr. E. W. Humphry, Secretary.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE.

Date.	Emergency Rota.	Appeal Court No. 1.	Mr. Justice Eve	Mr. Justice Romer.
Monday May 30	Mr. More	Mr. Hicks Beach	Mr. Bloxam	Mr. Hicks Beach
Tuesday .. 31	Jolly	Bloxam	Hicks Beach	Bloxam
Wednesday June 1	Ritchie	More	Bloxam	Hicks Beach
Thursday . 2	Synge	Jolly	Hicks Beach	Bloxam
Friday 3	Hicks Beach	Ritchie	Bloxam	Hicks Beach

Date.	Mr. Justice Astbury.	Mr. Justice Clauson.	Mr. Justice Russell.	Mr. Justice Tomlin.
Monday May 30	Mr. Ritchie	Mr. Synge	Mr. Jolly	Mr. More
Tuesday .. 31	Synge	Ritchie	More	Jolly
Wednesday June 1	Ritchie	Synge	Jolly	More
Thursday . 2	Synge	Ritchie	More	Jolly
Friday 3	Ritchie	Synge	Jolly	More

The Whitsun Vacation will commence on Saturday, the 4th day of June, 1927, and terminate on Tuesday, the 7th day of June, 1927, inclusive.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-à-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement, Thursday, 16th June, 1927.

	Middle Price 25th May	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	86 19/32	4	13	0	—		
Consols 2½%	54⅞	4	11	0	—		
War Loan 5% 1929-47	100⅜	4	19	6	4	19	6
War Loan 4½% 1925-45	95¾	4	14	0	4	17	0
War Loan 4% (Tax free) 1929-42 ..	100⅜	3	19	6	3	19	6
Funding 4% Loan 1960-90	86⅞	4	12	0	4	12	6
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years ..	92⅜	4	6	6	4	9	6
Conversion 4½% Loan 1940-44 ..	97⅞	4	12	0	4	16	0
Conversion 3½% Loan 1961	76½	4	12	0	—		
Local Loans 3% Stock 1921 or after ..	64⅛	4	13	6	—		
Bank Stock	246	4	18	0	—		
India 4½% 1950-55	90½	4	19	6	5	2	6
India 3½%	69½	5	0	6	—		
India 3%	59½	5	1	0	—		
Sudan 4½% 1939-73	94	4	16	0	4	17	0
Sudan 4% 1974	84½	4	15	0	4	18	6
Transvaal Government 3% Guaranteed 1925-53 (Estimated life 19 years) ..	80½	3	14	0	4	12	0
Colonial Securities.							
Canada 3% 1938	84½	3	11	6	4	18	0
Cape of Good Hope 4% 1916-36 ..	92½	4	6	6	5	0	0
Cape of Good Hope 3½% 1929-49 ..	80½	4	7	0	5	0	6
Commonwealth of Australia 5% 1945-75	100½	5	0	0	5	0	0
Gold Coast 4½% 1956	95½	4	14	6	4	17	6
Jamaica 4½% 1941-71	92	4	18	0	4	19	0
Natal 4% 1937	92½	4	6	6	4	19	6
New South Wales 4½% 1935-45 ..	90½	4	19	6	5	8	6
New South Wales 5% 1945-65	96½	5	3	6	5	4	6
New Zealand 4½% 1945	95½	4	15	0	4	18	6
New Zealand 5% 1946	101½	4	18	0	4	18	6
Queensland 5% 1940-60	96½	5	3	6	5	4	6
South Africa 5% 1945-75	102	4	18	0	4	19	6
S. Australia 5% 1945-75	98¾	5	1	6	5	2	6
Tasmania 5% 1945-75	100½	4	19	6	5	1	0
Victoria 5% 1945-75	100	5	0	0	5	2	0
W. Australia 5% 1945-75	99	5	1	0	5	3	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corpn.	62¾	4	16	0	—		
Birmingham 5% 1946-56	102½	4	17	6	4	18	6
Cardiff 5% 1945-65	101¼	4	19	0	4	19	0
Croydon 3% 1940-60	69	4	7	6	5	0	0
Hull 3½% 1925-55	78¼	4	10	0	5	0	0
Liverpool 3½% on or after 1942 at option of Corpn.	73½	4	15	6	—		
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	52¼	4	16	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	62½	4	16	0	—		
Manchester 3% on or after 1941 ..	63½	4	14	6	—		
Metropolitan Water Board 3% 'A' 1963-2003	63	4	15	0	4	16	0
Metropolitan Water Board 3% 'B' 1934-2003	64⅜	4	12	6	4	15	0
Middlesex C. C. 3½% 1927-47 ..	82½	4	5	6	4	17	6
Newcastle 3½% irredeemable	71¼	4	18	6	—		
Nottingham 3% irredeemable	61¾	4	17	0	—		
Stockton 5% 1946-66	101½	4	18	6	4	19	6
Wolverhampton 5% 1946-56	101¼	4	19	0	4	19	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture ..	80¾	4	19	0	—		
Gt. Western Rly. 5% Rent Charge ..	99	5	1	0	—		
Gt. Western Rly. 5% Preference ..	94	5	6	6	—		
L. North Eastern Rly. 4% Debenture..	76	5	6	0	—		
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